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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

The Interstate Commerce Commission, *Appellant*,

v.

The Louisville and Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta and West Point Railroad Company, *Appellees.*

No. 214.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ARGUMENT FOR THE APPELLANT.

L. A. SHAVER,
Solicitor.

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ABBREVIATIONS.

The following abbreviations are used in this argument:

Rec. = Printed transcript of record.

I. C. C. = Interstate Commerce Commission.

Ans. = Answer.

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The Interstate Commerce Commission, *Appellant,* v. **The Louisville and Nashville Railroad Company, The Western Railway of Alabama, and The Atlanta and West Point Railroad Company,** *Appellees.*	No. 214.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ARGUMENT FOR THE APPELLANT.

CHAPTER I.

Statement of case.

This case originated from a complaint made to the Interstate Commerce Commission, under section 13 of the act to regulate commerce, by Fuller E. Callaway, a merchant of Lagrange, Ga., against the defendants, the Louisville and Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta and West Point Railroad Company, forming a line from New Orleans, via Mobile, Montgomery, Opelika, and West Point, to *Lagrange*, *Hogansville*, *Newnan*, *Palmetto*, *Fairburn*, and *Atlanta*.

The complaint was—

First. That the rates of the defendants from New Orleans to Lagrange were *excessive or unreasonably high* in themselves, and therefore in violation of *section 1* of the act to regulate commerce, which requires all rate charges to be just and reasonable.

Second. That the rates of the defendants from New Orleans to Lagrange, and from New Orleans, through Lagrange, to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, were unduly prejudicial to Lagrange and unduly preferential to Atlanta and the other points named, and therefore in violation of *section 3* of the act to regulate commerce, which, among other things, prohibits undue preferences in rates as between *different localities.*

Third. That the rates of the defendants from New Orleans to Lagrange were in violation of the rule of *section 4* of the law, which forbids the exaction, "under substantially similar circumstances and conditions," of a greater charge for a shorter than a longer haul over the same line in the same direction, the shorter being included within the longer. This charge was based upon the admitted fact that the rates to Lagrange are materially higher than the rates for the longer haul through Lagrange, 13 miles on to Hogansville; 32 miles on to Newnan; 46 miles on to Palmetto; 53 miles on to Fairburn, and 71 miles on to Atlanta.

(See complaint of Callaway, Exhibit A to bill of complaint; Rec., 7.)

The Commission, after due investigation, found that these three charges were sustained, and, as required by section 14 of the law, "made a report in writing in respect thereto, including the findings of fact upon which the conclusions of the Commission were based." (See Exhibit C to bill of complaint; Rec., 25–48.) The "findings of fact in the report of

the Commission" are made "*prima facie evidence* of the matters therein stated." (Sections 14, 16 of the law.)

The Commission also, as required by section 15 of the law, issued an order or notice to the defendants to cease and desist from violating the law in the respects named. (See order of Commission, Exhibit D to bill of complaint; Rec., 48–51.)

The defendants refused to obey this order of the Commission, and thereupon the Commission, as authorized by section 16 of the law, instituted the present proceeding in equity in the circuit court of the United States for the southern district of Alabama, praying the enforcement of its order, and "*for such other and further relief in the premises as might seem meet, and equity might require.*"

Pleadings in court.

The bill of complaint filed in said circuit court by the Commission *reaffirms* the three charges set forth in the complaint before the Commission, namely, that the rates of the defendants are in violation of sections 1, 3, and 4 of the law.

(Paragraph X of bill of complaint; Rec., 4.)

The defendants, in their joint and several answer, traverse these three charges, and allege that their rates are in conformity with the law.

(Rec., 8–23.)

Action of the courts.

The circuit court sustained the order of the Commission, and rendered a decree enjoining the defendants from its violation.

The defendants appealed from the decree of the circuit court to the United States circuit court of appeals for the fifth circuit, and that court reversed the decree of the circuit court and rendered a decree remanding the case to the circuit court "with instructions to set aside its decree adjudging

that the order of the Commission be enforced and dismiss the application made for that purpose with costs, *the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law.*" (Rec., p. 429.) (See Chapter XLVIII of this Argument.)

The Interstate Commerce Commission duly filed a petition for rehearing, which was denied (Rec., 423–426), and the case is now in this court on appeal by the Interstate Commerce Commission from said decree of the circuit court.

CHAPTER II.

Assignment of Errors.

The following are the errors assigned:

1. Said circuit court of appeals erred in not affirming the decree of the circuit court of the United States for the southern district of Alabama adjudging that the order of the Commission be enforced against the Louisville and Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta and West Point Railroad Company.

2. Said circuit court of appeals erred in remanding said cause to said circuit court "with instructions to set aside its decree adjudging that said order of the Commission be enforced and dismiss the application made for that purpose with costs, the *whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it or upon such further pleadings and evidence as it may allow to be made or introduced to hear and determine the controversy according to law.*"

3. Said circuit court of appeals erred in refusing or failing to consider and determine said cause upon its merits as disclosed by the testimony and record therein.

4. Said circuit court of appeals erred in holding in effect that the same order should be made in said cause as was made by the Supreme Court of the United States in Interstate Commerce Commission *v.* The Clyde Steamship Company et al. (181 U. S., 29), and in East Tennessee, Virginia and Georgia Railway Company et al. *v.* The Interstate Commerce Commission (181 U. S., 1). (*See Chap. XLVIII of this Argument and Petition for Rehearing, Rec., pp., 423–426.*)

5. Said circuit court of appeals erred in making the same order in said cause as was made by the Supreme Court of the United States in Interstate Commerce Commission *v.* Clyde Steamship Company et al. (181 U. S., 29), and in East Tennessee, Virginia and Georgia Railway Company et al. *v.* The Interstate Commerce Commission (181 U. S., 1).

CHAPTER III.

The rates in question.

(1) Class rates.

(2) Rates on sugar, molasses, and rice.

The rates in question are, as before stated, rates from New Orleans to Lagrange and Atlanta, and also to stations between Lagrange and Atlanta, to wit, Hogansville, Newnan, Palmetto, and Fairburn. They are *class rates;* that is, the rates on the six numbered and the five lettered classes, and also rates on *sugar, molasses, and rice.*

(1) Class rates.

The class rates from New Orleans to the above-named points and *also to Opelika* in cents per hundred pounds, except Class F, which is per barrel, are shown in the table below:

Class rates from New Orleans, La.

Distances.		Classes.												Per barrel.
Miles.	To—	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
625	Lagrange	143	124	109	93	74	59	51	48	33½	29	66	74	59
558	Hogansville	138½	121	106½	90½	73	57½	39½	46½	33	28½	65	75½	56
457	Newnan	132½	114½	101	86	69½	55	37	44	32	27½	61½	71	56
471	Palmetto	127	110	97	81½	66½	54	36	43	31½	27	58½	66½	55
478	Fairburn	125	108	94½	79½	65	53	35	42	31	26½	57	64½	54
496	Atlanta	103	88	77	64	52	42	31	31	24	20	44	49	40
387	Opelika	103	88	77	64	52	42	24	33	26	22	46	51	44

All the above class rates, it will be observed, are materially higher to the shorter distance point—Lagrange—than for the haul through Lagrange to the longer distance points—Hogansville, Newnan, Palmetto, Fairburn, and Atlanta. The attention of the court is called, for the purpose of illustration, to the disparity in the rates on *first-class* goods. Those rates are, as shown below, *in cents per hundred pounds:*

To Hogansville	139½	To Lagrange	14
To Newnan	132½		
To Palmetto	127		
To Fairburn	125		
To Atlanta	103		

EXCESS OF CLASS 1 RATES TO LAGRANGE OVER CLASS 1 RATES TO LONGER DISTANCE POINTS, IN CENTS PER 100 POUNDS.

Lagrange rate exceeds Hogansville rate, 3½ cents.

Lagrange rate exceeds Newnan rate, 10½ cents.

Lagrange rate exceeds Palmetto rate, 16 cents.

Lagrange rate exceeds Fairburn rate, 18 cents.

Lagrange rate exceeds Atlanta rate, 40 cents.

The minimum carload weight allowed under the Southern freight classification, which applies to the traffic involved in this case, is 24,000 pounds, and the excess in dollars and cents of the rate per minimum carload on all the classes to Lagrange over the rates per minimum carload to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, is as shown in the following table:

Statement showing the excess per carload of 24,000 pounds of the class rates from New Orleans, La., to Lagrange, over the rates to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, Ga.

Classes.	From New Orleans, La., to Lagrange, Ga., higher than the rates to the following points by following amounts, viz:				
	Hogansville, Ga.	Newnan, Ga.	Palmetto, Ga.	Fairburn, Ga.	Atlanta, Ga.
1	$8.40	$25.20	$38.40	$43.20	$96.00
2	7.20	22.80	33.60	38.40	86.40
3	6.00	19.20	28.80	34.80	76.80
4	6.00	16.80	27.60	32.40	69.60
5	2.40	10.80	18.00	21.60	52.80
6	3.60	9.60	12.00	14.40	40.80
A	3.60	9.60	12.00	14.40	40.80
B	3.60	9.60	12.00	14.40	40.80
C	1.20	3.60	4.80	6.00	22.80
D	1.20	3.60	4.80	6.00	21.60
E	2.40	10.80	18.00	21.60	52.80
H	.....	7.20	18.00	22.80	60.00
F	2.40	7.20	9.60	12.00	55.60

Rates on sugar, molasses, and rice.

While traffic embraced in the classes (1, 2, 3, 4, 5, 6, A, B, C, D, E, H, F), and to which the above rates are applied, is transported by the defendants from New Orleans to Lagrange and the other points named, the commodities constituting the bulk of the freight so transported are *sugar, molasses, and rice.* The rates on sugar, molasses, and rice *in cents per hundred pounds* are given in the following table:

Rates on sugar, molasses, and rice from New Orleans.

[The abbreviations "C. L." and "L. C. L." stand, respectively, for carloads and less than carloads.]

To—	Sugar in barrels.		Taking sixth class.		Molasses in kegs.		Molasses in barrels or hogsheads.		Rice in barrels, any quantity.	Rice in kegs any quantity.
			Sugar, except in barrels.							
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.		
Lagrange	37	40	40	40	57	57	37	37	34½	36½
Hogansville	35½	38½	.....	.....	51½	51½	36	36	34	54½
Newnan	33	36	.....	.....	47	47	34	34	33	49
Palmetto	32	35	.....	.....	42½	42½	32	32	32½	45
Fairburn	31	34	.....	.....	40½	40½	31½	31½	32	42½
Atlanta	20	23	23	23	25	25	25	25	25	25
Opelika	20	23	23	23	25	25	25	25	25	25

The rates on sugar, molasses, and rice from New Orleans to Lagrange are, it will be seen, materially higher than the rates on those commodities to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta. We give below the excess of the Lagrange rates on sugar over the rates to the other points named in cents *per hundred pounds:*

Lagrange rate on sugar exceeds Hogansville rate 1½ cents.

Lagrange rate on sugar exceeds Newnan rate 4 cents.

Lagrange rate on sugar exceeds Palmetto rate 5 cents.

Lagrange rate on sugar exceeds Fairburn rate 6 cents.

Lagrange rate on sugar exceeds Atlanta rate 17 cents.

THE LAGRANGE RATE ON SUGAR OF 37 CENTS PER 100 POUNDS LACKS ONLY 3 CENTS OF BEING DOUBLE THE ATLANTA RATE OF 20 CENTS.

The Lagrange rate on sugar, etc., *per minimum carload of 24,000 pounds* exceeds the rates to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, as shown below:

Statement showing the excess per car of 24,000 pounds of the rates on sugar, molasses, and rice, from New Orleans, La., to Lagrange, over the rates to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, Ga.

From New Orleans, La., to Lagrange, Ga., higher than the rates to the following points, by the following amounts, viz:	Rates in dollars and cents per carload of 24,000 pounds.								
	Sugar in barrels.		Taking sixth class. Sugar except in barrels.		Molasses in kegs.		Molasses in barrels or hogsheads.		Rice in barrels, any quantity.	Rice in kegs, any quantity.
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.		
Hogansville, Ga..	$3.60	$3.60	.....	.....	$13.20	$13.20	$2.40	$2.40	$1.20	$48.00
Newnan, Ga.....	9.60	9.60	.....	.....	24.00	24.00	7.20	7.20	3.60	37.20
Palmetto, Ga	12.00	12.00	.....	.....	34.80	34.80	12.00	12.00	4.80	27.60
Fairburn, Ga	14.40	14.40	.....	.....	39.60	39.60	13.20	13.20	6.00	19.20
Atlanta, Ga.....	40.80	40.80	$40.80	$40.80	76.80	76.80	28.80	28.80	22.80	22.80

It will be noted that we have given the excess of the rates to the shorter-distance point, Lagrange, on *minimum* carloads of 24,000 pounds. *The excess on a larger or average carload will be much greater.*

Lagrange the shorter distance point.

While the Lagrange rates thus exceed the rates to the other points named, the distances or lengths of the hauls to those other points exceed the length of the haul to Lagrange as follows:

Lagrange, shorter haul than Hogansville by *13 miles.*

Lagrange, shorter haul than Newnan by *32 miles.*

Lagrange, shorter haul than Palmetto by *46 miles.*

Lagrange, shorter haul than Fairburn by *53 miles*.

Lagrange, shorter haul than Atlanta by *71 miles*.

The line involved in this case the short line.

The line involved in this case, made up of the defendants, the Louisville and Nashville Railroad, the Western Railway of Alabama, and the Atlanta and West Point Road, extending from New Orleans via Mobile and Montgomery through Lagrange to Atlanta, is shown on the annexed diagram. *This line is the shortest and most practicable line from New Orleans to Lagrange, Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, and the bulk of the traffic transported from New Orleans to those points passes over this line.*

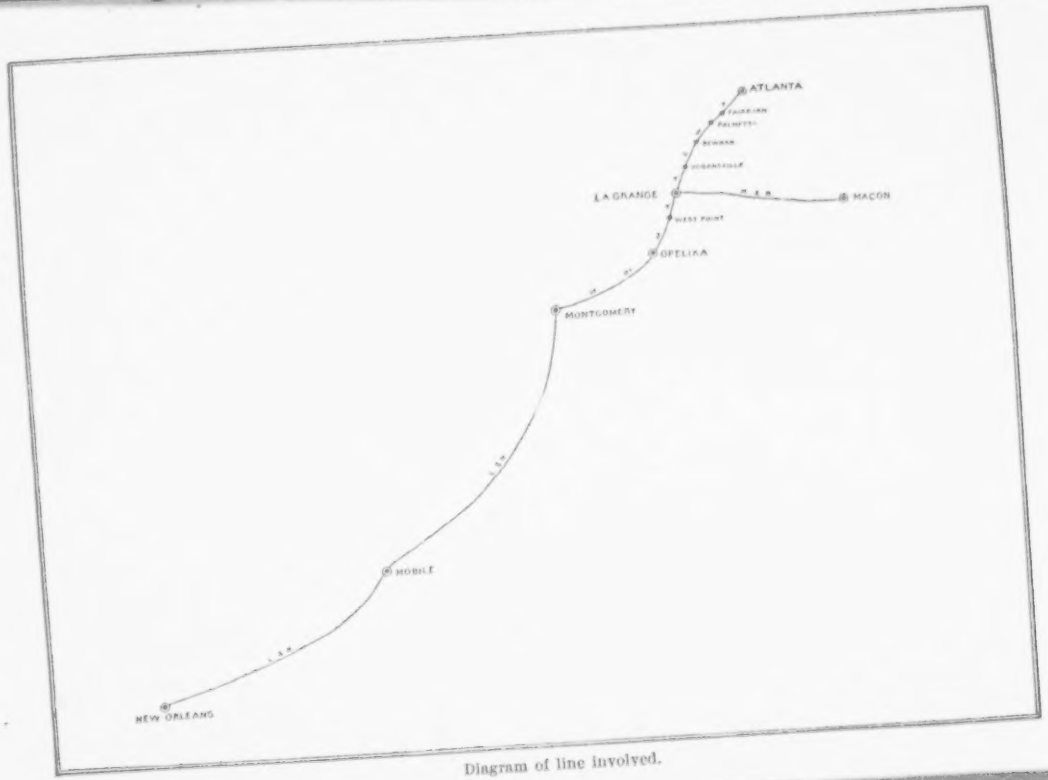


Diagram of line involved.

CHAPTER IV.

The plea of competition.

The discrimination against Lagrange not only in favor of the competitive point, Atlanta, but also of the noncompetitive or local points, Hogansville, Newnan, Palmetto, and Fairburn.

Answers to the plea of competition.

The discrimination against Lagrange, shown by the rates set forth in the preceding chapter, is not only in favor of Atlanta, but also of Hogansville, Newnan, Palmetto, and Fairburn. The sole plea of the defendants, however, in justification of the discrimination against Lagrange in favor of all of these points is *competition encountered at Atlanta.*

Atlanta is what is termed a *competitive point*, but Hogansville, Palmetto, and Fairburn are what are known as *strictly local stations.* This discrimination against Lagrange *in favor of these longer distance strictly local stations* distinguishes this case from any other case heretofore brought before the courts. The present case is also distinguishable in other material respects from other cases, *a matter to which the attention of the court will be called at some length further on in this argument.* (See Chapter XLIV.)

Answers to the plea of competition.

In answer to the plea of competition, the main propositions for which we shall contend are:

First. That the rates to Lagrange are in themselves *excessive* or *unreasonably high*, and that competition can not justify rates excessive or otherwise unreasonable in themselves, and therefore violative of section 1 of the law, which requires all rate charges to be just and reasonable in themselves.

Second. That competition can, in any event, only justify rates to a local noncompetitive point which are the lowest combination; that is, the combination of the through rates to the *nearest* competitive point plus the rates from such competitive point to the local noncompetitive point; and that consequently *the Lagrange rates should be based on Opelika, Opelika being the nearest competitive point to Lagrange, and not on Atlanta.*

Third. That the rates to Atlanta are either *reasonably high or unreasonably low*, and that—

(*a*) If the Atlanta rates are reasonably high, notwithstanding the competition at Atlanta, then such competition is no justification for the materially higher rates for the shorter haul to Lagrange; and that—

(*b*) If the Atlanta rates have been made unreasonably low in consequence of the competition at Atlanta, then there is a deficiency under those rates which is made up by increasing the rates to Lagrange and other points denied competitive rates, and that this placing of a burden upon traffic to Lagrange which should be borne by traffic to Atlanta is unlawful. (*Smyth* v. *Ames*, known as the "*Nebraska Maximum Rate Case*," 169 U. S., 541; E. T., etc., Ry. Co. *v.* I. C. C., 181 U. S., top p. 20.)

Fourth. That the Atlanta rates were established by *agreement* between the carriers, and are, therefore, not the result of competition.

Fifth. That conceding for argument's sake some dissimilarity of condition as between Lagrange and Atlanta has been shown, *it does not justify discrimination to the extent proven*, and that making the Lagrange rates as high as the Atlanta rates, which can be done under the order of the Commission, will be a reasonable allowance for any dissimilarity of condition resulting from such competition.

Sixth. That the means of competition exist at Lagrange as well as at Atlanta, and that if the carriers reaching Lagrange do not compete, this is their own voluntary action and can not justify discrimination against Lagrange.

Seventh. That the means of competition at Lagrange are greater than at Hogansville, Palmetto, and Fairburn, Lagrange being located on two distinct roads, while Hogansville, Palmetto, and Fairburn are only on one, and that competition at Atlanta can not justify discrimination against Lagrange in favor of Hogansville, Palmetto, or Fairburn—in other words, can not justify higher rates for the shorter haul to Lagrange than for the longer hauls through Lagrange to Hogansville, Palmetto, and Fairburn.

Eighth. That Lagrange and Newnan are both on two roads, and there is no excess of competition at Newnan over that at Lagrange, shown in this case, which can justify discrimination against Lagrange and in favor of Newnan—in other words, higher rates for the shorter haul to Lagrange than for the longer haul through Lagrange to Newnan.

CHAPTER V.

Excessiveness of Lagrange rates.

Competition can not justify rates excessive in themselves, in violation of section 1 of the law.

Grounds upon which the Lagrange rates are claimed to be excessive.

Our first proposition in answer to the plea of competition is that the Lagrange rates are in themselves excessive or unreasonably high, and that competition can not justify rates in themselves excessive.

The proposition that competition can not justify rates excessive in themselves is admitted by counsel for the carriers.

Section 1 of the law requires all rate charges to be just and reasonable in themselves. In the "Alabama Midland case" this court holds that competition may be set up as a defense under sections 3 and 4 of the law; but neither this court nor any other court has held that competition may, while being set up as a defense under sections 3 and 4, indirectly set aside the fundamental provision of section 1, that all rate charges shall be just and reasonable.

In Louisville, etc., R. Co. *v.* Behlmer, this court says:

> While the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First. *The absolute command of the statute that all rates shall be just and reasonable.* * * *
>
> (175 U. S., bot. p. 674.)

We give below a SUMMARY OF THE GROUNDS upon wh
we claim that the Lagrange rates are excessive:

First. The *average* of the rates per ton per mile yielded
the Lagrange rates are from three to five times higher t
the *average* revenue per ton per mile of roads through
the United States, and particularly in Southern territo
(Chap. VI, *infra.*)

Second. The rates for the haul of *425 miles* from N
Orleans to Lagrange are *over 30 per cent higher* than
standard maximum rates for *430 miles* established by
Georgia railroad commission, even when those rates
increased by the addition of 10 per cent allowed the Atla
and Westpoint road. (Chap. VII, *infra.*)

Third. The rates for the haul of *425 miles* from N
Orleans to Lagrange are *over 30 per cent higher* than
rates for a distance of *425 miles* under the local-distance ta
of the Illinois Central Railway Company (southern divisio
issued May 18, 1897, and effective June 1, 1897. (Rec., 2

Fourth. The rates for the haul *of 425 miles* from N
Orleans to Lagrange are very much higher than the ra
for a distance *of 430 miles* under the joint freight tariff
the Southern Railway Company, issued March 2, 1898,
effective March 5, 1898. (Rec., 248.)

Fifth. The rates for the haul *of 425 miles* from N
Orleans to Lagrange are very much higher than the rates
distances of over 300 miles under local freight tariff No. 1
(Western System) of the Southern Railway, effective F
ruary 18, 1895, and applying on business within the State
Tennessee and Alabama, and on interstate traffic betw
stations in the States of Tennessee, Georgia, Alabama,
Mississippi. (Rec., 248.)

Sixth. The rates for the haul of 425 miles from N
Orleans to Lagrange are the rates for the haul *of 496 m*

from New Orleans through Lagrange to Atlanta *plus the local rate for a haul of 71 miles* from Atlanta back to Lagrange, although the goods are only hauled 425 miles to Lagrange, *there being thus included in the Lagrange rates the charge for a haul of 142 miles not made, and for 71 miles of that haul a high local rate established for a strictly local haul originating at Atlanta and terminating at Lagrange.*

Seventh. That this combination of through and local rates is not the *lowest combination.* The combination on Opelika is (and should be) lower. (See Chap. XIX.)

Eighth. The rates for the haul through Lagrange and 71 miles on to Atlanta are reasonably high in themselves and, therefore, the materially higher rates for the materially shorter haul to Lagrange are, presumptively, at least, excessive.

The above eight grounds, upon which we predicate the excessiveness of the Lagrange rates, will be discussed at length in subsequent chapters of this argument.

CHAPTER VI.

Excessiveness of Lagrange rates continued.

Rate per ton per mile under Lagrange rates compared with average revenue per ton per mile on roads throughout the country.

As one among many other circumstances showing, or tending to show, the excessiveness of the rates to Lagrange, we call attention to the fact that those rates yield an *average* rate per ton per mile from *four* to *five* times as high as the *average* revenue per ton per mile on roads not only in Southern territory, but throughout the United States.

We give below the rates per ton per mile on the different classes under the rates from New Orleans to Lagrange:

Class rates per ton per mile to Lagrange.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Cts. 6.73	*Cts.* 5.88	*Cts.* 5.13	*Cts.* 4.37	*Cts.* 3.48	*Cts.* 2.77	*Cts.* 1.92	*Cts.* 2.02	*Cts.* 1.57	*Cts.* 1.36	*Cts.* 3.10	*Cts.* 3.48	*Cts.* 2.77

The average of the above class rates per ton per mile is 3.42 cents, or 34.4 mills.

Revenue per ton per mile on roads throughout the United States and in Southern territory.

The revenue per ton per mile on roads throughout the United States for the years from 1890 to 1897, both inclusive, is shown on the next page.

Revenue per ton per mile.

Year.	Cent.
1890	0.941
1891	.895
1892	.898
1893	.878
1894	.890
1895	.839
1896	.806
1897	.798

Average of above, 0.864 cent, or 8.64 mills. (Rec., 244.)

THE REVENUE PER TON PER MILE FOR THE YEAR 1897 ON ROADS IN WEST VIRGINIA, VIRGINIA, NORTH CAROLINA, AND SOUTH CAROLINA IS GIVEN BELOW:

0.648 cent, or 6.48 mills. (Rec., 244.)

THE REVENUE PER TON PER MILE FOR THE YEAR 1897 OF ROADS IN KENTUCKY, TENNESSEE, MISSISSIPPI, ALABAMA GEORGIA, AND FLORIDA WAS:

0.864 cent, or 8.64 mills. (Rec., 244.)

RECAPITULATION.

	Mills.
Average of rates per ton per mile to Lagrange	*34.2*
Average revenue per ton per mile for eight years of roads throughout United States	8.6
Average revenue per ton per mile for 1897 of roads in Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida	8.6
Same of roads in West Virginia, Virginia, North Carolina, and South Carolina	6.4

From the above it will be seen that the *average* of the rates per ton per mile to Lagrange, namely, *34.2 mills*, is *four times* as large as the *average* revenue per ton per mile for eight years of roads throughout the United States, and *four times* as large as the *average* revenue per ton per mile for the year 1897 of roads in Kentucky, Tennessee, Mississippi, Alabama,

Georgia, and Florida; over *five times* as large as the *average* revenue per ton per mile of roads in West Virginia, Virginia, North Carolina, and South Carolina.

Below are set forth the rates per ton per mile, and the *average* of those rates on sugar, molasses, and rice from New Orleans to Lagrange.

Sugar, molasses, and rice rates per ton per mile to Lagrange.

Sugar in barrels.		Sugar in barrels.		Taking sixth class, sugar except in barrels.		Molasses in kegs.		Molasses in barrels or hogsheads.	
C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Cents. 1.74	*Cents.* 1.88	*Cents.* 1.88	*Cents.* 1.88	*Cents.* 0.27	*Cents.* 0.27	*Cents.* 1.74	*Cents.* 1.74	*Cents.* 1.62	*Cents.* 1.62

The average of the above rates per ton per mile on sugar, molasses, and rice is—

1.46 cents, or 14.6 mills.

Although sugar, molasses, and rice are not high grades of traffic, the above *average* of the rates per ton per mile on those commodities from New Orleans to Lagrange—namely, *14.6 mills*—is *over twice* as high as the average revenue per ton per mile for the year 1897 on roads in West Virginia, Virginia, North Carolina, and South Carolina, and *nearly twice as high* as the average revenue per ton per mile for the year 1897 of roads in Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida, and on roads throughout the United States for the years from 1890 to 1897, both inclusive.

Counsel for the carriers contended in his oral argument that the average revenue per ton per mile of roads *on all classes of traffic* sheds no light upon the reasonableness of a rate upon a single commodity or class of traffic. It is not necessary that we controvert this proposition, because *we have compared above the average revenue of the roads on all classes of traffic with the average of the rates per ton per mile on all classes of traffic to Lagrange.*

While receipts per ton per mile will increase as the proportion which high-class traffic bears to low-class traffic increases, those receipts will also increase as the rates increase.

Counsel for the carriers demonstrates the first half or clause of the above proposition, *but ignores the concluding clause.*

For this purpose he supposes that the tonnage of a road carried 1 mile for each of three consecutive years is 2,000,000 tons; that during the first year one-fourth of the tonnage is Class 1, and carried at 5 cents a ton, and three-fourths Class A, and carried at 1 cent a ton; that the second year one-half of the tonnage was Class 1 and the other one-half Class A, and carried at the above rates, respectively; and that the third year three-fourths of the tonnage was Class 1 and the remaining one-fourth Class A, and carried at the above rates, respectively. Under this state of facts, although the rates and the *aggregate* tonnage remained the same each year, the average receipts per ton per mile would be for the first year 2 cents, for the second year 3 cents, and for the third year 4 cents.

This simply shows that the receipts per ton per mile are subject to variation, as the classes of traffic transported vary, *the rates and aggregate tonnage remaining the same.*

The fact remains, however, that if the rates on Class 1 traffic for the second year, for instance, were advanced to 7 cents, and to 2 cents on Class A traffic, the average receipts per ton per mile would be increased from 3 cents per ton per mile to 4½ cents. *This demonstrates that the amount of the average receipts per ton per mile are dependent upon the amount of the rate charged, as well as the proportion which high-class traffic bears to low-class traffic. Both are factors.*

If, therefore, as counsel for the roads says, the average receipts per ton per mile are valuable as "showing the pro-

portion which the high-class traffic bears to the low-class traffic," they are equally valuable as showing whether *the rates charged are* HIGH OR LOW.

The fact that the rates from New Orleans to Lagrange yield an average rate per ton per mile so many times higher than the revenue per ton per mile on roads in all sections of the United States, taken in connection with other pertinent facts, certainly shows, or tends to show, the excessiveness of those rates.

CHAPTER VII.

The excessiveness of Lagrange rates continued. They are over 30 per cent higher than Georgia standard rates for the same distance even with 10 per cent added to those rates.

There are a number of cases before the courts involving rates to Atlanta from all directions, and to shorter distance surrounding localities. In all these cases the defendant carriers claim that as parts of the through rates to the shorter distance points they charge *the Georgia standard distance rates*, established by the Georgia railroad commission, for those portions of the hauls within the State of Georgia, and they set up this as one ground for the opinion expressed by them that the rates to the shorter distance points are reasonable.

Their witnesses testify in effect that the standard rates established by the Georgia Railroad Commission afford them *a standard of reasonableness*. (Ans. to int. 5, Rec., 370, 376, 391.) In Paragraph XIII of the answer filed by the defendants in the present case, they allege that the rates fixed by the Georgia Railroad Commission are just and reasonable. (Rec., 20.)

The defendants having thus emphatically indorsed the reasonableness of the Georgia standard rates fixed by the Georgia Railroad Commission, *are estopped from disputing their reasonableness.*

On comparison of the Lagrange rates from New Orleans, the distance being *425 miles*, with the Georgia standard rates *of 430 miles*, it will be found that the Lagrange rates for *425 miles* are over 30 per cent higher than the Georgia standard rates for *430 miles.*

The Georgia standard rates established by the railroad commission of Georgia for the distance of 430 miles are as follows, in cents per 100 pounds:

Georgia standard rates for 430 miles.

1	2	3	4	5	6	A	B	C	D	E	F (per barrel).	G	H
91	77	62	52	42	37	37	37	26	24	43	52	11.5	54

(Rec., 246.)

The Atlanta and West Point Road is allowed by the Georgia railroad commission to add 10 per cent to the above rates on all classes except classes C, D, and F. With this addition of 10 per cent the above rates become as shown below:

Above rates with 10 per cent added on all classes except classes C, D, and F.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F (per barrel).	G.	H.
100.1	84.7	68.2	57.2	46.2	40.7	40.7	40.7	26	24	47.3	52	12.6	59.4

The class rates for 425 miles charged by the defendants from New Orleans to Lagrange are as follows:

Class rates for 425 miles from New Orleans to Lagrange.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F (per barrel).	H.
143	124	109	93	74	59	41	48	33.5	29	66	59	74

(Rec., 70.)

Subtracting the Georgia standard rates for *430 miles*, with 10 per cent added, from the above class rates charged by defendants for a haul of *425 miles* from New Orleans to Lagrange, it will be seen that the Lagrange rates are *over 30 per cent higher* than the Georgia standard rates, even with 10 per cent added, as shown in next table.

Excess in cents per hundred pounds of Lagrange rates over Georgia standard rates, with 10 per cent added to the latter.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.
42.9	39.3	40.8	35.8	27.8	18.3	0.3	7.3	7.5	5.0	18.7	7.0	14.6

The above excesses *in cents per hundred pounds* of the Lagrange rates over the Georgia standard rates, with 10 per cent added to the latter, amount on a *minimum carload of 24,000 pounds* to the sums given below:

Excess per minimum carload of 24,000 pounds of Lagrange rates over standard rates of the Georgia Railroad Commission for 430 miles, with 10 per cent added.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.
$102.96	$94.32	$97.92	$85.92	$66.72	$43.92	$0.72	$17.52	$18.00	$12.00	$44.88	$16.80	$35.04

These standard rates established by the Georgia Railroad Commission are *maximum* rates, beyond which carriers are allowed to go only in *exceptional* cases. In other words, they are the *rule*. The Atlanta and West Point road, for some reason not given, is allowed, as we have seen, to add 10 per cent to these rates on certain classes, but the Lagrange rates are *over 30 per cent* higher than these maximum rates, *even when thus increased.*

Judged, therefore, by the standard of reasonableness which the carriers have themselves set up, both in their pleading and in the testimony of their witnesses, the Lagrange rates are excesive.

CHAPTER VIII.

Excessiveness of Lagrange rates continued.

Attempted explanation of or answer to the fact, that the Lagrange rates are 30 per cent higher than the Georgia Standard rates with 10 per cent added to those rates.

Notwithstanding, as stated in the preceding chapter, the defendants allege in their answer that the Georgia Standard rates are reasonable and their witnesses testify in effect that *they afford a standard of reasonableness*, still, counsel for the carriers undertakes to show that those Georgia Standard rates are unreasonably low, and, therefore, not a proper standard of reasonableness.

He is driven to this position by the fact that the Lagrange rates involved in this case are, as shown in the preceding chapter, so very much higher than those Georgia Standard rates for the same distance.

DIVISION OF HAUL TO LAGRANGE INTO FOUR HAULS. In order to show that the Georgia Standard rates are unreasonably low, counsel for the carriers resorts to the *ingenious device* of dividing the haul from New Orleans to Lagrange into *four distinct hauls*, to wit, from New Orleans to Mobile, from Mobile to Montgomery, from Montgomery to West Point, and from West Point to Lagrange. By thus dividing the haul into four hauls, and by adding together the separate rates charged by the carriers for these four hauls, respectively, he arrives at a rate of *183 cents* on first-class goods for a haul of 425 miles from New Orleans to Lagrange,

when the rate for that distance, as established by the Georgia Railroad Commission, even with 10 per cent added, is only 100 cents.

THE HAUL TO LAGRANGE ONE THROUGH HAUL AND NOT FOUR DISTINCT HAULS. The testimony shows that traffic from New Orleans to Lagrange is hauled to Lagrange under through bills of lading naming aggregate through rates.

(Fuller E. Calloway, Rec., bot. p. 284, top. p. 285.)

(T. J. Harwell, Rec., 312.)

(S. R. Bradfield, Rec., 291.)

THROUGH RATES ARE LOWER THAN THE SUM OF THE SEPARATE RATES OF THE DIFFERENT CARRIERS COMPOSING THE THROUGH LINE. It is a universally recognized fact that the through rates over a line composed of several connecting carriers are invariably made less than the sum of the separate rates charged by those carriers for the hauls over their respective roads. *This is indeed a commercial necessity.* Traffic would not move under through rates, the sum of the separate rates of the different members of the through line. Such rates would be prohibitory.

(Jesse M. Smith, Rec., 253.)

In *Chicago and Northwestern Ry. Co.* v. *Osborne* (52 Fed. Rep., 912) the circuit court of appeals for the eighth circuit, Mr. Justice Brewer delivering the opinion, recognized the distinction between through rates and the separate (local) rates of the different members of the through line, and held that through rates were properly made lower than the sum of the separate (local) rates of the several members of the through line.

In *Minneapolis and St. Louis R. Co.* v. *Minnesota*, the Supreme Court says:

> "*There is an underlying fallacy in the argument of the railroad company in this connection, that the sum of two*

reasonable local rates can not be unreasonable. * * * *We can not assent to this proposition.* The practice of railways in this country is almost universally to the contrary, and a through tariff is almost always fixed at a less sum than the aggregate of local stations between nearby stations upon the same road. * * * There is an increase cost of local business over through business in the additional fuel consumed and the increased wear upon the machinery of each train involved in stopping at every station." (186 U. S., 262.)

THE FACT, THEREFORE, THAT THE GEORGIA STANDARD RATES ARE VERY MUCH LOWER THAN RATES MADE BY A COMBINATION OF THE SEPARATE RATES OF THE DIFFERENT MEMBERS OF THE THROUGH LINE DOES NOT SHOW OR TEND TO SHOW THAT THE GEORGIA STANDARD RATES ARE UNREASONABLY LOW, AND, THEREFORE, NOT A PROPER STANDARD OF MEASUREMENT.

CHAPTER IX.

Excessiveness of Lagrange rates continued.

Further attempted explanation of excess of Lagrange rates over Georgia Standard rates.

It is admitted that the Georgia rates with which we have compared the Lagrange rates are STANDARD rates *intended to apply to Georgia roads in general*, but it is claimed that certain classes of roads are exempt, *for some reason not stated*, from those rates and are allowed to charge higher rates.

For this purpose it is said the railroad commission of Georgia has divided the roads in the State into seven classes, and that roads in class 1 are not allowed to exceed the *standard* rates, while roads in class 2 are allowed to exceed those rates by 10 per cent, in class 3 by 20 per cent, in class 4 by 25 per cent, in class 5 by 25 per cent, in class 6 by from 20 to 50 per cent, and in class 7 by 25 per cent on some classes of traffic and by 50 per cent on others.

The only one of the defendants located in the State of Georgia and subject to the rates prescribed by the Georgia Railroad Commission is the Atlanta and West Point Road, and it is admitted that that road is in class 2 and allowed to add only *10 per cent* to the standard rates.

(Rec., 245.)

Rule 30, or the 90 per cent rule.

By rule 30 of the Georgia Railroad Commission roads in the State of Georgia "*not under the same control*" are allowed to charge a maximum rate not greater than the sum of their local rates, less 10 per cent, for the distance hauled over each road.

(Rec., 250.)

Witness Biles estimate of rates which the Georgia Railroad Commission would authorize from New Orleans to Atlanta.

By placing all the defendants in class No. 4, which are allowed to add *25 per cent* to the standard rates, and by applying rule 30 (the 90 per cent rule) to the defendants, the witness for the defendants, George P. Biles, manages to "figure out" rates from New Orleans to Lagrange less than the rates in question and which he says the Georgia Railroad Commission "*would authorize.*"

(Rec., 391.)

This opinion or conclusion as to what the Georgia Railroad Commission "*would authorize*" is wholly valueless, because:

In the first place, there is no warrant for placing the defendants in class 4, which are allowed to add *25 per cent* to the standard rates. The only one of the defendants subject to the Georgia Railroad Commission, the Atlanta and West Point road, is, as stated above, admitted to be in class 2, which is allowed to add *only 10 per cent.*

(Rec., 245.)

In the second place, rule 30 (90 per cent rule), allowing members of through lines to charge 90 per cent of their local rates, less 10 per cent, only applies to roads "*not under the same control*," and the defendants in this case constituting the through line from New Orleans to Lagrange are under the same or a common control.

Defendants under a common control.

Two defendants, the Western Railway of Alabama and the Atlanta and West Point road, have the same general officers, such as president, traffic manager, auditor, etc., and all the witnesses for the defendants, examined on that point, testified that these two roads were under the same control and management. *There is no dispute as to that fact.*

(T. J. Hunter, Rec., 89.)

(George C. Smith, Rec., 97.)

All three of the defendants under a common control, management, or arrangement as to through freight from New Orleans to Lagrange.

The uncontradicted testimony is that traffic from New Orleans to Lagrange is hauled to Lagrange under through bills of lading naming aggregate through rates. (Rec., bot. p. 284, top p. 285; 312; 291.) Where goods are thus shipped under a through bill of lading, this court holds that the several roads constituting the through line have thereby subjected themselves to "a common control, management, or arrangement for a continuous carriage" within the meaning of the act to regulate commerce. The following is the language of the court on this point:

> "When goods shipped *under a through bill of lading* from a point in one State to a point in another are received in transit by a State common carrier under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce. When we speak of a through bill of lading we are referring to the usual method in use between connecting companies, and must not be understood to imply that a common *control*, *management*, or *arrangement* might not be otherwise manifest." [Italics mine.]
>
> (162 U. S., 193.)

It will be perceived that this Court speaks of a through bill of lading as implying, not only a common management or arrangement, but also a *common control*.

See also U. S. ex rel. I. C. C. *v.* Seaboard Ry. Co. (82 Fed. Rep., 563).

The conjecture or opinion, therefore, of the witness Biles, that the Georgia Railroad Commission would, under its rules, "*authorize*" higher rates from New Orleans to Lagrange

than the rates complained of, is based on TWO FALSE ASSUMPTIONS: *First*, that the defendants would be placed in class 4 and allowed to add *25 per cent* to the standard rates, and, *second*, that the defendants, *who are under a common control*, would be entitled to the benefit of rule 30, which applies only to roads *not under a common control*.

CHAPTER X.

Excessiveness of Lagrange rates continued.

Over 30 per cent higher than rates for same distance under other tariffs besides the Georgia Standard tariff.

The excessiveness of the Lagrange rates is further shown by the fact that they are *more than 30 per cent higher* than the rates under the following three tariffs of, respectively, the Southern Railway, Southern System; the Southern Railway, Western System, and the Illinois Central Railroad, Southern System, to wit:

1. Joint Freight Tariff of the Southern Railway Company (Southern System), I. C. C. No. 2910, issued March 2, 1898, and effective March 5, 1898.

2. Local Freight Tariff No. 1047 (Western System), applicable to business within the States of Tennessee and Alabama, and interstate traffic between stations in the States of Tennessee, Georgia, Alabama, and Mississippi, effective February 18, 1895.

3. Local Distance Tariff of Illinois Central Railroad Company (Southern Line), effective June 1, 1897.

For convenience of comparison, we again set forth below the rates complained of in this case from New Orleans to Lagrange, and underneath the class rates for a distance of 425 miles under the above three (3) tariffs, and the excess of

the former over the latter, in cents per hundred pounds and in dollars and cents per minimum carload:

Class rates of defendants for 425 miles from New Orleans to Lagrange.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F (per barrel.)	H.
Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
143	124	109	93	74	59	41	48	33½	29	66	59	74

Class rates for distance of 425 miles of Southern Railway Company under Joint Freight Tariff, I. C. C. No. 2910, effective March 5, 1898.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F (per barrel).	H.
Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
94	87	74	60	50	40	30	38	32	27	48	58	58

Excess of Lagrange rates on six numbered classes over above rates per 100 pounds and per minimum carload.

	1.	2.	3.	4.	5.	6.
Per 100 pounds.....	$0.49	$0.37	$0.35	$0.33	$0.24	$0.19
Per minimum car load....	117.60	88.80	84.00	79.20	57.60	45.60

Class rates for 425 miles under local freight tariff No. 1047, W. S. of Southern Railway Company, effective February 18, 1895.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F. (per barrel).
103	88	77	55	52	42	43	44	35	32	52	55	70

Excess of Lagrange rates on six numbered classes over above rates.

PER 100 POUNDS AND PER MINIMUM CARLOAD.

	1.	2.	3.	4.	5.	6.
Per hundred pounds.....	$0.40	$0.36	$0.32	$0.38	$0.22	$0.17
Per minimum carload.....	96.00	86.40	76.80	91.20	52.80	40.80

Class rates for 425 miles under local-distance tariff of Illinois Central Railroad Company (Southern lines), effective June 1, 1897.

1.	2.	3.	4.	5.	6.	A.		B.		C.		D.		E.	H.	F. (per barrel).	
						C L	L CL	C L	L CL	C C	L CL	L CL	L CL			C L	L CL
90	72	59	50	43	38	38	43	40	45	31	36	27	32	43	59	59	69

Excess of Lagrange rates on six numbered classes over above rates, per 100 pounds and per minimum carload.

	1.	2.	3.	4.	5.	6.
Per 100 pounds	$0.53	$0.52	$0.50	$0.43	$0.31	$0.21
Per minimum carload	127.20	124.80	120.00	93.20	74.40	50.40

CHAPTER XI.

Excessiveness of Lagrange rates continued.

Objection to our comparison of rates that no substantial similarity of circumstances and conditions has been proven.

A prima facie case of such similarity made out.

Counsel for carriers has not himself observed the rule laid down by him as to such proof.

Counsel for the carriers contends that we should have accompanied the various tariffs of rates with which we have compared the Lagrange rates with proof that the circumstances and conditions incident to the transportation or lines to which the former are applicable are substantially similar to the circumstances and conditions attending the haul from New Orleans to Lagrange. We think this appears *prima facie* from the fact that *these tariffs are for the most part applicable to practically the same region of country as that traversed from New Orleans to Lagrange.* ALL THESE TARIFFS APPLY TO SOUTHERN TERRITORY.

(Rec., 247, 248.)

These tariffs are made evidence by stipulation between counsel, and the stipulation describes one of those tariffs as "Local Freight Tariff, No. 1047, W. S. (Western System) of the Southern Railway, I. C. C., 233, effective February 18, 1895, *applying on business within the States of Tennessee and Alabama and on interstate traffic between stations in the States of Tennessee, Georgia, Alabama, and Mississippi.*" (Rec., 248.)

This shows that the tariff covered business within the States of "Tennessee and Alabama" and *interstate traffic* between stations in the States of "Tennessee, Georgia, Alabama, and Mississippi"—*part of the very territory to which the rates complained of in this case are applied.*

The stipulation describes the other tariff of the Southern Railway as "*Joint* Freight Tariff of the Southern Railway, I. C. C., No. 2910, issued March 2, 1898, and effective March 5, 1898." It will be noted that this is a "*Joint* Freight Tariff"—that is, it is a tariff not applicable to a haul over the Southern Railway alone, but to a haul *in connection with other roads.* (Rec., 248.)

The lines of the Southern Railway are located *entirely in Southern territory, and run all through the territory in which the line of defendants is located.*

The stipulation as to the tariff of rates of the Illinois Central Railroad Company describes it as "Local distance tariff of the Illinois Central Railroad Company (*Southern lines*) I. C. C., No. B 316." The stipulation, it is thus seen, shows that this tariff applies to the "*Southern lines*" of the Illinois Central Railroad Company—that is, lines running through Southern territory into New Orleans. (Rec., 247.)

GEORGIA STANDARD RATES.—The defendants, as we have shown, are *estopped* from denying that the Georgia Standard rates established by the Georgia Railroad Commission are proper standards of measurement because they have alleged in their answer (section 13) the reasonableness of those rates, and all their witnesses have testified to their reasonableness, *for the purpose of showing the reasonableness of the rates from Atlanta to Lagrange.*

(Rec., 20, 370, 376.)

Counsel for the defendants does not conform to the rule laid down for us.

It is worthy of note that, while counsel for the carriers contends that rates themselves, without proof of the circumstances and conditions incident to them, are of no value for purposes of comparison, and that the burden is upon the party introducing such rates to show the similarity of conditions, *has not conformed to these rules himself.* He has compared the rates from Memphis, Cincinnati, and other Ohio River points, and from Baltimore, Philadelphia, New York, and Boston to Lagrange with the rates from New Orleans to Lagrange, and *has in no instance made proof of a substantial similarity of circumstances and conditions.* (Argument for defendants.)

Again, as above stated, counsel for the carriers, in order to show the reasonableness of the rates for the *haul of 71 miles from Atlanta to Lagrange*, has proven by Mr. G. P. Biles, the rates for the same distance under the "Alabama Distance Table in force on Southern Railway," the "Tennessee Distance Table in force on the Cincinnati, New Orleans and Texas Pacific Railway," and the "Mississippi Distance Table in force on the Kansas City, Memphis and Birmingham Railroad," *without making any proof as to similarity of conditions.* (Rec., 392.)

If these tariff sheets are competent in themselves, without proof of similarity of conditions, to show the reasonableness of the rate for the 71 miles haul from Atlanta to Lagrange, the tariffs which we introduced are equally competent in themselves to show the excessiveness of the rates *for the 425 miles haul from New Orleans to Lagrange.*

Counsel for the carriers should not lay down for others a more rigorous rule than he applies to himself.

CHAPTER XIa.

Claim that reasonableness of Lagrange rates from New Orleans appears from a comparison of them with rates from Louisville, Baltimore, Philadelphia, New York, and Boston to Lagrange.

The Lagrange rates from New Orleans much higher in proportion to distance than the rates from those cities.

Comparison is made in the argument for the defendants of the Lagrange rates for a haul of *425 miles* from New Orleans with the rates for hauls of from *527* miles from Louisville to Lagrange up to hauls of *1,161* miles from Boston to Lagrange.

The following are the distances from the cities named to Lagrange:

	Miles.
From Louisville to Lagrange	527
From Baltimore to Lagrange	761
From Philadelphia to Lagrange	857
From New York to Lagrange	948
From Boston to Lagrange	1,161

The distance from New Orleans to Lagrange being only 425 miles, it will be seen that the distances from these cities to Lagrange exceed the distances from New Orleans to Lagrange as follows:

	Miles.
From Louisville by	102
From Baltimore by	336
From Philadelphia by	432
From New York by	523
From Boston by	736

On calculation it will be found that the Lagrange rates from New Orleans are much higher, *in proportion to distance*, than the rates from Louisville, Baltimore, Philadelphia, New York, or Boston to Lagrange.

FOR EXAMPLE, the lengths of the hauls from Philadelphia, New York, and Boston to Lagrange are from *200 to 300 per cent* greater than the length of the haul from New Orleans to Lagrange, yet the rate from New Orleans to Lagrange on first-class goods is only about *16 per cent* less than the rate from Philadelphia, New York, and Boston.

CHAPTER XII.

Excessiveness of Lagrange rates continued.

Local rates for haul of 71 miles from Atlanta to Lagrange included in Lagrange rates, although the traffic is delivered at Lagrange.

Those local rates higher than Georgia Standard rates for 70 miles.

It is a conceded fact in this case that the Lagrange rates are made up of the through rates for the haul from New Orleans through Lagrange on to Atlanta plus the local rate from Atlanta back to Lagrange, *although the traffic is delivered at Lagrange in the first instance and is not hauled to Atlanta and back.*

It is for this reason that counsel for the carriers has endeavored, as stated in the preceding chapter, to prove the reasonableness of the rates for the 71 miles haul from Atlanta to Lagrange.

As the haul of 71 miles is not in fact made, we contend that the rates for the haul from Atlanta to Lagrange are not properly in issue. *Our proof relates to the rates in issue, namely, the rates for the 425 miles haul from New Orleans to Lagrange.*

Local rates from Lagrange to Atlanta charged as part of through rates to Lagrange are higher than Georgia Standard rates for the distance of 70 miles.

It is to be noted, however, that the local rates from Atlanta to Lagrange, charged as part of the through rates from New Orleans to Lagrange, are higher than the Georgia Standard

rates for the distance of 70 miles. The following are the Georgia Standard rates for that distance:

1.	2.	3.	4.	5.	6.
36	33	29	26	20	15

(Rec., 246, 261.)

The following are the local rates from Atlanta to Lagrange (71 miles) charged as part of the through rates from New Orleans to Lagrange:

1.	2.	3.	4.	5	6.
40	36	32	29	22	17

(Rec., 370.)

CHAPTER XIII.

Excessiveness of Lagrange rates continued.

Combination of through and local rates.

Lagrange charged for a haul of 142 miles not in fact made.

The excessiveness of the Lagrange rates appears from the manner in which they are made. The rates from New Orleans to Lagrange, as stated in the preceding chapter, are the rates charged for the haul through Lagrange and 71 miles on to Atlanta plus the local rate from Atlanta 71 miles back to Lagrange, *although the traffic is in fact delivered at Lagrange in the first instance and not hauled to Atlanta and back.*

Lagrange charged for a haul of 142 miles not made.

In the rate to Lagrange, therefore, there is included a *charge for 142 miles' haul (or two hauls of 71 miles) not in fact* made, and for 71 miles of that haul from Atlanta back to Lagrange, *the charge of a high local rate established by the Georgia Railroad Commission for a strictly local haul of a shipment of goods originating at Atlanta and terminating at Lagrange.*

The railroad officials testify that the through rate for the 496 miles haul through Lagrange to Atlanta is reasonable for that haul, and that the local rate for a haul of 71 miles back to Lagrange is reasonable for that haul, and that the combination of these two rates is also reasonable for the haul from New Orleans to Lagrange, which is shorter by 142 miles than the distance covered by these two rates.

This is, to say the least, a severe draft upon our credulity. If a rate reasonable for a haul of 496 miles is added to a rate reasonable for a haul of 71 miles, making a total haul of 567 miles, then it would appear to be excesssive for a haul of 425 miles *embraced in the haul* for which *the first rate is charged.*

Combination of two reasonable rates.

We are told, however, that this combination rate to Lagrange is reasonable because it is composed of two reasonable rates, and that an *entire* rate composed of two reasonable rates must itself be reasonable.

A more transparent fallacy is not conceivable.

If the service for which the two rates were established was in fact performed, the proposition would be plausible that the entire rate, being composed of two reasonable rates, must, therefore, be reasonable.

It would be fallacious and unsound even then, however, because a rate fixed to cover the extra expense of a strictly local haul and *reasonable only as a local rate* is not reasonable as a proportion of a through rate.

In view of the fact that the haul stops at Lagrange, what has the reasonableness of a rate for a haul through Lagrange to Atlanta and of a local rate for a haul from Atlanta back to Lagrange to do with the case?

In *Minneapolis and St. Louis R. Co.* v. *Minnesota* (186 U. S., 262) this court says:

> "*There is an underlying fallacy in the argument of the railroad company in this connection, that the sum of two reasonable local rates can not be unreasonable.* * * *."

CHAPTER XIV.

Excessiveness of Lagrange rates continued.

The charge of a local rate as a part of a through rate prima facie excessive.

It is testified by railroad officials, and is a conceded fact, that rates established by the Georgia Railroad Commission are for local hauls within the State of Georgia, and that the Georgia Railroad Commission has no jurisdiction, and does not undertake, to establish rates on *interstate* traffic, *and also that the rate for the 71-miles haul from Atlanta to Lagrange was established for a strictly local haul originating at Atlanta and terminating at Lagrange.*

(P. J. McGovern, Rec., bot. p. 372, top p. 373.)

It is also a conceded fact that the expense to the carrier on strictly local hauls is much greater in proportion to distance or per mile than on long through hauls, and that therefore local rates are properly made much higher per mile than through rates or any portion of through rates.

(P. J. McGovern, Rec., 372.)

This is illustrated by a comparison of the rate per ton per mile under the through rate from New Orleans to Atlanta with the rate per ton per mile established by the Georgia Railroad Commission for the local haul from Atlanta to La Grange.

Rate per ton per mile, New Orleans to Lagrange..... 41.5 mills.
Rate per ton per mile, Atlanta to Lagrange ..... 111 mills.

The local rate is thus seen to be about three times as high per ton per mile as the through rate.

The charge, therefore, of a local rate as a part of a through rate, *where the hauls are through hauls and not local and the extra expense of local hauls is not incurred*, is *prima facie* excessive. The Commission has so held, and so have the courts.

In *Augusta Southern Railroad Company* v. *Wrightsville and Tennille Railroad Company* it is said:

> "Nor does it follow, as insisted for the respondent, that the full local rate *permitted by the State law* is, in the absence of a contract between the roads for through shipment, a just or reasonable rate on freight *plainly not local*, but through freight. Why is it reasonable that a railroad company should charge a higher rate for local than for through shipments?
>
> "In King *v.* Railroad Co. (4 Interst. Commerce Com. R., 362), we find this clear proposition:
>
> "'The local rates are made for many trains that run slow, stop generally at every station, delivering and taking on freight, chiefly in parcels not loaded or unloaded by the shippers or consignees, but loaded or unloaded by the servants of the company. They, of course, carry freight occasionally in carloads to local points. Such shipments are, of course, much more expensive than through freights, and for such services an additional charge is reasonable, and the laws permit it.'
>
> "But *no fair or equitable construction will justify the exaction of local rates for freights not local where services belonging to local rates is not offered.*"
>
> (74 Fed. Rep., p. 527.)

In *Minneapolis and St. Louis R. Co.* v. *Minnesota* (186 U. S., 262), this court uses this language:

> "We can not assent to this proposition" (that the sum of two reasonable local rates can not be unreasonable). "The principle of railways in this country is almost universally to the contrary and a through tariff is almost always fixed at a less sum than the aggregate of local tariffs between nearby stations on the same road * * *

There is an increased cost of local business over through business in the additional fuel consumed and the increased wear upon the machinery of each train involved in stopping at every station."

(Citing opinion of Mr. Justice Brewer in *Chicago, etc., Ry. Co.* v. *Thompkins*, 176 U. S., 167).

In *Chicago and Northwestern Ry. Co.* v. *Osborne*, the circuit court of appeals for the eighth circuit, Mr. Justice Brewer delivering the opinion, recognized the distinction to which we have been calling attention between local and through rates, and held that through rates for long through hauls were properly made lower per mile than local rates for hauls covering parts of the through haul.

(52 Fed. Rep., 912.)

CHAPTER XV.

Excessiveness of Lagrange rates continued.

The combination of through and local rates builds up the basing point at the expense of surrounding local stations.

The effect of the combination of through rates to Atlanta and local rates back to Lagrange as the rates to Lagrange, is to build up the basing point, Atlanta, at the expense of Lagrange. It does this in two ways:

First. It enables Atlanta merchants to compete on terms of equality with Lagrange merchants on the streets of Lagrange.

Secondly. It excludes the Lagrange merchants from all the territory between Lagrange and Atlanta and gives the Atlanta merchants a monopoly in that territory.

(1) As the rate on a shipment to Lagrange direct is made up of the rate for the haul through Lagrange to Atlanta and the local rate back, it is evident the Atlanta merchant can ship goods from New Orleans through Lagrange to Atlanta and then reship them back to Lagrange *at the same aggregate rate as that paid by the Lagrange merchant for a shipment direct to Lagrange, and this places the Atlanta merchant on terms of equality with the Lagrange merchant at the doors of the latter.*

Mr. Knott, vice-president of the Louisville and Nashville Railroad Company, testified that "*the Atlanta merchant has no advantage whatever over the Lagrange merchant in selling in Lagrange.*" (Rec., bot. p. 136.)

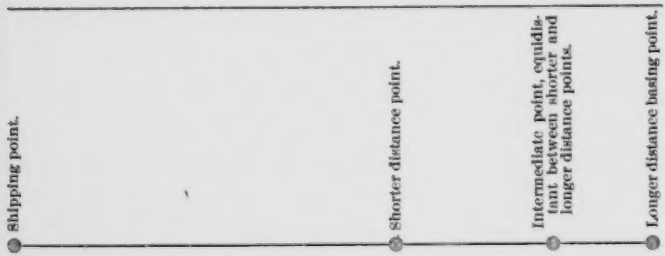
The trouble is that the Atlanta merchant is placed on an equality with the Lagrange merchant in *Lagrange, while the Lagrange merchant is not so placed in Atlanta.* What would the Atlanta merchants think if Lagrange merchants were placed on a footing of equality with Atlanta merchants on the streets of Atlanta as to traffic from New York?

(2) As the Lagrange merchant has to pay two rates for the delivering of the goods to him direct at Lagrange, if he undertakes to reship those goods to any point between Lagrange and Atlanta, it is evident HE MUST PAY THREE RATES: *First*, the rate for the haul through Lagrange to Atlanta; *secondly*, the local rate for the haul from Atlanta back to Lagrange; and *thirdly*, the rate from Lagrange on to the intermediate point.

The Atlanta merchant, however, on a reshipment to an intermediate point between Atlanta and Lagrange, only pays TWO RATES, the through rate to Atlanta plus the local rate from Atlanta to the intermediate point.

THIS MANIFESTLY EXCLUDES THE LAGRANGE MERCHANT FROM ALL INTERMEDIATE TERRITORY AND GIVES THE ATLANTA MERCHANT A COMPLETE MONOPOLY IN THAT TERRITORY.

The diagram below illustrates what is above stated.


Shipping point.
Shorter distance point.
Intermediate point, equidistant between shorter and longer distance points.
Longer distance basing point.

Rate to longer distance point	= 80 cts.	
Local rate from longer distance point back to shorter distance point	= 20 cts.	
Rate to shorter distance point	= 100 cts.	
Rate from shorter and longer distance points to intermediate point	= 10 cts.	
Aggregate rate on reshipment from shorter distance point to intermediate point	= 80 cts. + 20 cts. + 10 cts. = 110 cts	
Aggregate rate on reshipment from longer distance point to intermediate point	= 80 cts. + 10 cts.	= 90 cts.
Excess of aggregate rate from shorter ditance point		= 20 cts.

CHAPTER XVI.

Claim that the system of combining through and local rates is the result of competition at the basing point.

Motive of the carriers in adopting this system. It gives them the rates for two hauls, when only one haul is made.

It is claimed that this system of combining through and local rates as the rates to local stations is the result of competition at the basing point or trade center.

The question arises, Why does competition at the longer-distance basing point have the *precise* effect of enabling the merchant at the longer-distance point to monopolize the business in territory between the two points and to compete on equal terms with the merchant at the shorter-distance point at the *very doors of the latter*, and also enable the road to charge *for services not rendered?*

Motive of the carriers in adopting this system. It enables the carrier to charge for two hauls when only one is made.

The inquiry naturally suggests itself, what benefit can result to the carriers from such a system? What is their object? The answer is obvious. The tendency of this system is to make towns or localities surrounding basing points tributary or dependent upon such basing points for their supplies of goods. The basing points become, in other words, distributing points for surrounding territory, and the carriers

thereby have the benefit of two hauls, the through haul to the basing point and the haul from the basing point at high local rates to surrounding localities; and if merchants at surrounding localities buy their goods direct from the sources of supply of those goods and not from the basing point, *the carrier receives the same rate as if the goods had been shipped in the first instance to the basing point and then hauled back or on to surrounding localities.*

CHAPTER XVII.

Comments of Judge Cooley and Aldace F. Walker on the system of combining the through and local rates.

Origin of the system.

Counsel for the carriers made proof before the Commission of the fact that Judge Cooley, in 1886, before the Interstate Commerce Commission was organized, as arbitrator, approved a certain basis of rates, agreed upon by the carriers, establishing the relation between the rates *from Ohio River points and Mississippi River points to Atlanta*, but Judge Cooley never indorsed *the relation between the rates to Lagrange and Atlanta* and never approved the system of combining through and local rates, resulting in the greater charge for the shorter than the longer haul, but, *on the contrary, is on record as emphatically disapproving the system.*

Judge Cooley, when a member of the Commission, in the case entitled *In re Louisville and Nashville Railroad Company* (1 I. C. C. R., p. 31), said on this subject:

> The preeminence of such trade centers in the territory reached by the petitioner's roads *is peculiar*, and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions, or none at all, to less important stations. This condition of affairs tends to perpetuate itself, and the disparity of rates as between competitive and noncompetitive towns, the former being the trade centers, must have had some influence to increase steadily the *disparity in growth and prosperity.*
>
> "By some of the witnesses before us this was bitterly complained of, while by others it was defended as being

best for both classes of towns. The smaller towns in this part of the country, it was said, are *dependent* on the trade centers for their supplies, and they get indirectly the benefit of low rates to the distributing points in lower prices than could otherwise be given them. In proportion, also, as the distributing points are prosperous they can and do extend to the dealers at other points *credit and indulgence*. The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad managers a power of determining within certain limits what towns shall be trade centers and what their relative advantages; and while it may be, as they assert it is, that in deciding upon rates under the pressure of the competition of trade centers they endeavor to do justice between them, yet as they do not at the same time feel a like pressure from noncompetitive points, it is obvious that justice to such points is in great danger of being overlooked, and it is altogether likely that it is so to some extent.

"*One result is that towns recognized by railroad managers as trade centers come to be looked upon* as towns with *special privileges*, and other towns strive for recognition as such and complain perhaps of injustice when they fail. It was made very clear by the evidence produced in behalf of the railroads that the exceptionally favorable rates which were given to certain localities were in some cases *given to build up trade centers;* and as they had had that effect, and large establishments had been located at such centers, invited by the favoring rates, it was urged that there would be injustice in now compelling the roads to go back to the rule of equality. Of this it may be said, *first*, that as between different localities it is no sound reason for discriminating in favor of one as against another that the purpose is to build up the favored locality as a trade center; and, *second*, *if the discrimination has existed and has had its effect, the fact that large establishments have* thereby been encouraged is no reason why the injustice should be perpetuated. *This statute aims at equality of right and privilege, not less between towns than between individuals, and it will no more sanction preferential rates for the purpose of perpetuating distinctions than of creating them.*"

In the case of *Martin et al.* v. *Chicago, Burlington and Quincy Railroad Company* (2 I. C. C. R., pp. 46–47), Judge Cooley says in reference to the bearing of the act to regulate commerce on this Southern Trade Center System:

> But a fatal difficulty with the theory that a trade center as such is entitled to specially favorable rates is found in the fact that it is in conflict with the spirit and purpose of the act to regulate commerce. One of the reasons for the passage of that act was that, by means of rebates and other contrivances, large towns and heavy dealers secured advantages which gave them a practical monopoly of markets and shut out the small towns and small dealers. * * * All large towns, by reason of their being large, inevitably secure certain advantages in transportation. They get more roads, more trains, more agents and servants to attend promptly to business demands, and will be more accommodated, within the limits allowed by law, than will smaller towns, but it does not lie within the power of this Commission to add to these advantages by compelling the carriers operating the lines which reach out from a great railroad center to give to the large towns on their lines more favorable rates than they give to those which are smaller. The fact that under relatively equal rates one town, by reason of its situation, its size, the extent of its manufactures or trade, or for any other reason, secures the major part of the trade with the small towns, is not a fact which can empower this Commission to interfere. There may be great hardships in the situation, but those do not change the law. In contemplation of a law which was enacted in the interest of equality as between large and small interests, there can be no unjust discrimination in giving to large and small towns relatively equal rates. It is not a matter of the least importance, in a legal sense, that the small towns are strictly local and noncompetitive. If, under relatively equal rates, they can elevate themselves to the class of jobbing towns, it is their right to do so.

In the case entitled "*In re Tariffs and Classifications of the Atlanta and West Point Railroad Company et al.*," Mr.

Aldace F. Walker, then a member of the Commission, but who resigned to accept employment from a railway association, said on this subject (3 I. C. C. R., p. 19):

> "Previous to the passage of the act to regulate commerce it was the universal custom *in this section of the country* to establish rates to certain basing points, subject to fluctuations occasioned by competition and otherwise, while rates to and from all other points were obtained by adding the local charges of the various terminal or initial roads to the rates at the basing points.
>
> "These points were selected by reason of their situation upon navigable streams, or at the junction of railroad lines, or as determined by other considerations. Their number was large. The result of the system was that rates quite reasonable, and in some cases low, were given to and from the basing points, and that goods were thence distributed at high local charges in all directions. For example, the rates from New York or Chicago to Atlanta, plus the rate from Atlanta to local points north, east, south, and west therefrom, were the rates charged from New York or Chicago to the latter points direct; and the latter rates were usually very much in excess of rates to distributing points situated at a greater distance over the same line in the same direction. *While this method was satisfactory to the centers which it created and maintained*, the smaller towns and rural communities protested against a system which worked so obviously to their disadvantage. Since the passage of the act the number of these favored localities has decreased in the Southern States, and upon many of the lines the disparity in rates as between them and intermediate or local stations has been diminished. So far as passenger traffic is concerned the rates are generally, if not universally, upon a mileage basis; except upon a few of the weakest roads they are 3 cents per mile."

In the case of the *Union Pacific Company* v. *Goodridge* (149 U. S., p. 690) this court says that the act to regulate commerce was designed "to cut up by the roots the entire system of rebates and discriminations in favor of *particular*

localities, special enterprises, or favored corporations, and to put all shippers on an absolute equality;" and the court also pertinently refers to the fact that carriers "deriving their franchises from the legislature, and *depending upon the will of the people for their very existence*, are bound to deal fairly with the public * * * and to put *all their patrons upon an absolute equality.*"

Origin of the system—Distributing points.

Trade centers are sometimes called distributing as well as basing points, and the fact that they were originally distributing points for surrounding localities may have originated the practice of charging through rates to the distributing point and local rates from the distributing point to surrounding localities, which then purchased their goods and supplies from distributing points. The distributing point was then a reservoir from which goods were sent out to surrounding localities. There were then two distinct hauls—a through haul to the distributing point and local hauls thence to surrounding points. The merchants at surrounding points in those days bought their goods from the distributing point, and not from New Orleans, New York, or Cincinnati, the sources of supply.

The situation now, however, has wholly changed, and there is no excuse whatever for charging local rates as parts of through rates to points surrounding trade centers or basing points. *The reason ceasing, the practice or rule should cease.* As the proof shows, merchants at Lagrange do not buy their goods from Atlanta or Opelika, but from New Orleans, Cincinnati, or New York and other Northeastern cities, and they are consigned and hauled through to Lagrange.

CHAPTER XVIII.

Basing-point or trade-center systems outside of Southern territory.

Basing-point system in trunk-line territory.

Distinction between basing-point systems outside of Southern territory and the system which prevails in that territory.

The one violates the law, the other does not.

Counsel for the carriers calls attention to the fact that basing points or trade centers are not confined to Southern territory. In this connection he cites the basing-point system in what is known as trunk-line territory—that is, territory *north* of the Ohio and Potomac rivers and east of the Mississippi as far as New York and Boston on the Eastern seaboard.

In this territory the rates from New York to Chicago are taken as the basis—that is, as 100 per cent—and the rates to intermediate shorter distance points are certain percentages of the New York-Chicago rate, the amount depending on the length of the haul.

(Answer of P. J. McGovern to cross-interrogatory 18, Rec., 374.)

For example, the rates from New York to Indianapolis are fixed at 93 per cent of the New York-Chicago rate—the distance from New York to Indianapolis being 825 miles and from New York to Chicago 912 miles. In like manner the rates from New York to Detroit are fixed at 78 per cent of the New York-Chicago rate; from New York to Cincinnati at 87 per cent; from New York to Columbus, Ohio, at 87 per cent, and from New York to Cleveland, Ohio, at 71 per cent.

It is thus seen that under this basing-point system there is no greater charge for the shorter than the longer haul.

This is a radical distinction between the Southern trade-center or basing-point system and the trunk-line basing-point system. The latter is not in contravention of the rule of the fourth section of the law, while the former is.

It is a well-established fact that the rates from the Eastern seaboard, New York and Boston, to Chicago, *are competitive rates;* in other words, rates controlled by water competition via the *Hudson River and the Erie Canal and the Lakes* up to the very doors of Chicago.

Notwithstanding this competition, it has not been found necessary to violate the long and short haul rule by making rates to intermediate points higher than rates to Chicago.

The rates to intermediate points are in some instances made as high as the rates for the longer haul to Chicago. Competition has not *driven the carriers beyond this point.*

This sustains our proposition that Lagrange rates not higher than the rates to Atlanta will make due allowance for any dissimilarity of conditions which may exist because of competition at Atlanta.

The rates from the East to points west of the Mississippi are combinations of the rates to the Mississippi plus the rates from the Mississippi on. This, however, does not *result in a greater charge for the shorter than the longer haul.*

In some instances, as shown by the testimony of Mr. Smith, the rates to Pacific coast terminals are somewhat lower than the rates to some intermediate points; but Mr. Smith testifies that these are *exceptional cases* and that the *rule* is the other way.

Violations of the law is the *rule* in the Southern territory.

Trade centers exist and flourish in trunk-line territory and in the North. This demonstrates that violations of the long and short haul rule are not necessary to the maintenance of such trade centers.

Counsel for carriers stated in his oral argument that *combination rates existed before the advent of railways*, and cited as an example rates from New York by ocean to Charleston or Savannah and thence to points inland, the entire rate to the inland point being a combination of the ocean rate with the inland rate. This, however, did not result in a higher rate for a shorter haul. *That is a device of the roads alone.*

CHAPTER XIX.

Excessiveness of Lagrange rates, continued.

Claim that Lagrange rates are not excessive because of the alleged fact that Lagrange is given the lowest combination of through and local rates.

The lowest combination is and should be on Opelika and not on Atlanta.

The main defense set up in the answer of the defendants, and by their witnesses in the testimony, and by their counsel in his argument before the courts below, is, that the Lagrange rates are reasonable, because they are a combination of the competitive rates from New Orleans to Atlanta with the local rates from Atlanta back to Lagrange, and *that this combination is the lowest combination of through and local rates that can be made to Lagrange.*

In the answer of defendants, counsel for the carriers sets forth tables of rates, showing that by basing the Lagrange rates on the Atlanta rates there results a *lower combination* than if they were based on the *Montgomery rates.*

The lowest combination on Opelika.

The lowest combination is, however, as a matter of fact, and should be, on OPELIKA.

Opelika is a competitive point, and given for the most part the same rates as Atlanta. (See first table of rates, Chapter III, page —, of this argument; Rec., top p. 353, 359.) *The distance from Opelika to Lagrange is only 38 miles, while from Atlanta back to Lagrange it is 71 miles.*

The rates for the haul of 38 miles from Opelika to Lagrange should be very much less than for the 71 miles haul from Atlanta to Lagrange, and we find, according to the undisputed testimony on this point, that *the rates charged from Opelika to Lagrange are less than the rates from Atlanta back to Lagrange, and that this results in making the Opelika combination materially lower than the Atlanta combination.*

This will be seen from the following tables of rates:

Rates from Opelika to Lagrange.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
32	29	26	23	19	14	14	14	8.2	8	19	23	17.2

(Rec., bot. pp. 282, 332.)

Under these rates the combination on Opelika is materially lower than the combination on Atlanta, as shown by the tables below:

Rates, New Orleans to Lagrange, based on Opelika.

Classes.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.
Rates from New Orleans to Opelika	103	88	77	64	52	42	24	33	26	22	46	44	51
Rates from Opelika to Lagrange	32	29	26	23	19	14	14	14	8.2	8	19	17.2	23
New Orleans to Lagrange, based on Opelika	135	117	103	87	71	56	38	47	34.2	30	65	61.2	74

Rates, New Orleans to Lagrange, based on Atlanta.

Classes.	1.	2.	3.	4.	5	6.	A.	B.	C.	D.	E.	F.	H.
Rates from New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	40	49
Rates from Atlanta to Lagrange	40	36	32	29	22	17	17	17	9.5	9	22	19	29
Rates from New Orleans to Lagrange, *based on Atlanta*	143	124	109	93	74	59	41	48	33.5	29	66	59	78

Excess of combinations on Atlanta over combinations on Opelika.

Classes.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.
Cents per 100 lbs.....	8	7	6	6	3	3	3	1	...	...	1	...	4
Per minimum carload of 24,000 lbs.....	$19.20	$16.80	$14.40	$14.40	$7.20	$7.20	$7.20	$2.40	...	...	$2.40	...	$9.60

(NOTE.—Opelika merchants can ship goods from New Orleans to Opelika and then reship from Opelika to Lagrange at lower aggregate rates than Lagrange merchants are charged on a straight shipment to Lagrange by 8 cents per 100 pounds, or $19.20 per minimum carload on *class 1 goods, etc.*)

Combination on Opelika should be less than above, Opelika being 109 miles shorter haul from New Orleans than Atlanta.

Under any reasonable system of rate making the rate to Opelika, the haul being shorter by 109 miles, should be less than to Atlanta; and under any reasonable system of rate making, as before said, the rate for the 38 miles haul from Opelika to Lagrange should be (as it is) less than for the 71 miles haul from Atlanta to Lagrange. *A Lagrange rate based on the Opelika rate should, therefore, be materially lower not only than a Lagrange rate based on the Atlanta rate, but also than the above Opelika combination rate.*

Opelika combination the more natural combination.

Moreover, the Opelika combination would be, we might say, *the more natural*, because under that *the service for which the combination rates would be charged would be rendered*—the haul being through Opelika and on to Lagrange; whereas under the Atlanta combination, while the haul stops at Lagrange, the Lagrange rates embrace a charge for the haul to Atlanta and back—*a charge for four terminals and a haul of 142 miles not in fact made.*

We here give a diagram of the route from New Orleans to Atlanta, from which it appears that the haul from Atlanta back to Lagrange is *nearly twice as long as the haul from Opelika on to Lagrange.*

DIAGRAM.

DISTANCES -

New Orleans	to	Atlanta, --	496	Miles.
"	"	La Grange -	425	"
"	"	Opelika --	387	"
Opelika	to	La Grange ---	38	Miles.
Atlanta	"	" ---	71	"

CHAPTER XX.

Excessiveness of Lagrange rates continued.

Practical admission that Opelika combination is the lower combination, and that Lagrange is entitled to that combination.

Confession of judgment on this point by putting in force, since argument in circuit court of appeals, the Opelika combination as the rates to Lagrange.

Counsel for the carriers filed in the circuit court of appeals what purported to be a "supplemental argument," but which was rather an attempt to get into the record or *before the mind of the court* matter which not only was not in existence when the order of the Commission was made and when the suit to enforce that order was brought in the circuit court, but which is alleged to have come into existence nearly two years after suit was instituted, and long after it had been heard and decided by the circuit court and had been argued and submitted on *appeal* to the circuit court of appeals.

The order of the Commission involved in this case was issued December 31, 1897, and this suit was commenced in the circuit court at Mobile July 23, 1898. The matter sought to be brought before the court is what purports to be a "joint freight tariff," issued by the appellants *May 15, 1900*, to be effective *May 20, 1900*.

If such a practice as this is legitimate and receives the sanction of this court, all that defendant carriers will have to do in any case after the Commission has filed its bill will be

to readjust their tariffs and then ask the courts to dismiss on that ground the Commission's bill of complaint, *thus leaving the carriers without any decree of the court restraining them from returning to the abuses which have been the subject of complaint.*

THE NEW TARIFF PURPORTS TO GIVE LAGRANGE THE BENEFIT OF THE OPELIKA COMBINATION, AND IS AS FOLLOWS:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
135	117	103	87	71	56	38	47	33½	29	65	74	59

The Lagrange rates complained of in this case are as follows:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
143	124	109	93	74	59	41	48	33½	29	66	74	59

It will be perceived that the rates in the new tariff are lower on all the classes than the rates in the tariff complained of, except D, H, and F, and on those classes they are the same.

The new tariff does not fully remedy the wrongs complained of.

While this new tariff reduces the Lagrange rates on all classes but three by giving Lagrange the benefit of the Opelika combination, it does not fully remedy the wrongs complained of. It still leaves the Lagrange rates materially higher, not only than the Atlanta rates, but also than the rates to the local stations, Hogansville, Newnan, Palmetto, and Fairburn, situated between Lagrange and Atlanta.

New tariff a confession of judgment or an admission that the rates complained of are unlawful.

IT CALLS AT MOST FOR A MODIFICATION OF THE ORDER AND NOT AN ABSOLUTE DISMISSAL OF THE COMMISSION'S BILL OF COMPLAINT.

The new tariff is an *admission* that Lagrange is entitled to the *Opelika* combination, and that the rates complained of were to the extent it reduced them illegal; and if the court should conclude to consider it and be influenced by it to any extent, *it would at most call for a modification of the order of the Commission and not for an absolute dismissal of its bill.* If, as before stated, the bill should be absolutely and unqualifiedly dismissed, there would be nothing to prevent the appellants reinstating their old unjust tariff.

Even if the appellants, *after suit brought*, had put in force a tariff *conforming fully* to the order of the Commission, it would have been no ground for dismissing the Commission's bill of complaint. *Per contra*, it would have been a confession or admission of the justice and legality of the order of the Commission, and *a decree for the enforcement of the order would still have been necessary to prevent a return to the old discriminating tariff.*

CHAPTER XXI.

Excessiveness of Lagrange rates continued.

No extra expense on hauls from New Orleans to Lagrange, whether made in carloads or less than carloads.

Lagrange charged for four terminals.

There is no allegation in the answer of the defendants, nor any testimony, showing that the higher rates for the shorter haul to Lagrange than to Atlanta, etc., are justified by any extra expense or anything relating to the *nature and character* of the service of transportation to Lagrange, on the one hand, and Atlanta, etc., on the other.

Competition, as before said, is the sole defense relied upon.

Mr. R. E. Lutz testified before the Commission as follows:

> "I SUPPOSE it costs fully three times as much to handle Lagrange business as it does Atlanta business, notwithstanding the distance to Atlanta is greater than it is to Lagrange."

Counsel for the carriers cites this testimony, but omits to mention the fact that the witness was comparing the cost on *less than carloads* to Lagrange with the cost on *carloads* to Atlanta (Rec., 108, 109). This testimony of Mr. Lutz, moreover, is mere SUPPOSITION.

It is manifest the witness should have compared the cost on less than carloads to Lagrange with the cost on less than carloads to Atlanta, and the cost on carloads to Lagrange with the cost on carloads to Atlanta.

On cross-examination as a witness before the court he was called on to do this, and testified that there would be no difference in expense of transfers, either on carload or less than carload shipments, to Lagrange and Atlanta, as will be seen from the following extracts from his testimony. (Answer of R. E. Lutz to cross-interrogatories 38, 39, 40, 41, 47, 48; Rec., bot. p. 363, top p. 364; 365.)

LESS THAN CARLOADS.

Cross-interrogatory 47. My question is, In the event a less than carload shipment is made to Atlanta, is the expense of transfer any less than on the shipments to Lagrange?

Answer. I can hardly answer that, for the simple reason that we seldom have less than carload shipments to Atlanta.

Cross-interrogatory 48. Suppose there should be?

Answer. *There should be no difference.* (Rec., 365.)

AS TO CARLOAD SHIPMENTS.

Cross-interrogatory 38. When goods are hauled in carloads from New Orleans to Lagrange, is there any transfer except at Montgomery?

Answer. No, sir.

Cross-interrogatory 39. When goods are hauled from New Orleans via Montgomery to Lagrange, is the expense of transfer at Montgomery any greater than when such goods are hauled to Atlanta?

Answer. No.

Cross-interrogatory 40. When goods are hauled in carloads from New Orleans to Lagrange, are they not hauled in the same car all the way?

Answer. They would be, ordinarily, unless there was some reason which would make it necessary to transfer the car. Ordinarily they would go through.

Cross-interrogatory 41. Is there more expense to transfer a car at Montgomery to the track of the Western Railway of Alabama when goods are shipped to Lagrange than when shipped to Atlanta?

Answer. No, sir; there is no difference in the cost of moving a car from a point on the Louisville and Nashville Railway to points on the Western Railway of Alabama. (Rec., bot. p. 363, top p. 364.)

There is, therefore, no extra expense on shipments of goods from New Orleans to Lagrange over that on shipments from New Orleans to Atlanta in either case—that is, whether goods are shipped in carloads or less than carloads.

There is, however, on shipments to Atlanta in both cases the extra expense of the 71 miles longer haul.

Goods shipped to Lagrange take the higher rates than the Atlanta rates, whether shipped in carloads or less than carloads.

The attempt is made to justify the higher rates to Lagrange than to Atlanta, because it is said that goods are shipped to Lagrange for the most part in less than carloads, while to Atlanta they are shipped for the most part in carloads, and that less than carload shipments are more expensive than carload shipments.

The discrimination in rates against Lagrange and in favor of Atlanta has brought about this very condition of things.

Mr. Fuller E. Callaway, a leading merchant in Lagrange for a long number of years, testifies:

"Interrogatory No. 15. If you say that goods are seldom shipped in carloads from New Orleans to Lagrange, state why this is so.

"Answer. The reason why goods are seldom shipped in carloads from New Orleans to Lagrange is on account of the excessive discrimination of freight rates against Lagrange, which paralyzes Lagrange's outlet to such an extent that she can not handle carloads in competition with Opelika and Atlanta, which have such preferential rates against Lagrange." (Rec., 285.)

In attempting to justify the higher rates to Lagrange because shipments to Lagrange are for the most part in less

than carloads, the carriers are seeking to take *advantage of their own wrong*—in other words, of a situation or condition the result of their discrimination against Lagrange.

They have tied Lagrange hand and foot, and because she can not run while thus tied, they contend she should remain tied.

Lagrange charged for four terminals.

The cost of every haul consists of the expense of the *two terminals* and the intermediate haul. Every rate is intended to cover the expense of two terminals. The rate from New Orleans to Atlanta covers the terminal expenses at New Orleans and at Atlanta, and the rate from Atlanta back to Lagrange covers the terminal expenses at Atlanta and at Lagrange. Therefore, the Lagrange rate, being made up of these two rates, embraces the *expenses of four terminals.*

This fact clearly indicates the excessiveness of the Lagrange rate.

CHAPTER XXII.

Lagrange victimized in both directions.

Lagrange can not compete with Atlanta on the north or with Opelika on the south.

The case of *I. C. C.* v. *The Clyde S. S. Co., the Atlanta and West Point R. R. Co., et al.* (93 Fed. Rep., 83), involved rates from New York and other Eastern cities to Lagrange as the shorter distance point and Opelika as the longer distance point. It was shown in that case that the Lagrange rates from the East were, as in the present case, based on the Atlanta rates; that is, they were the through rates to Atlanta from the East plus the rate from Atlanta on to Lagrange. (NOTE.—*In that case the haul was actually performed.*)

The proof in that case showed that the rates to Lagrange from the East thus made up were so much higher than the rates from the East for the haul through Lagrange to Opelika that Opelika merchants could not only compete with Lagrange merchants in Lagrange on terms of equality, but could actually undersell Lagrange merchants on the streets of Lagrange. It was also shown in that case, as in the present, that Atlanta merchants could compete with Lagrange merchants on terms of equality in Lagrange, and had a monopoly in the territory between Lagrange and Atlanta on traffic from the East.

In the present case on traffic from New Orleans, the rates to Opelika plus the rates to Lagrange—in other words, the Opelika combination—being lower than the Atlanta combination, Opelika merchants can undersell Lagrange merchants on the streets of Lagrange and have a monopoly of the territory between Lagrange and Opelika.

Lagrange victimized in both directions.

This system of rate making, therefore, results in victimizing Lagrange, so to speak, in both directions. Under it she can not compete on traffic from either the east or the west with Atlanta merchants in territory between Lagrange and Opelika. SHE CAN NOT COMPETE ON TERMS OF EQUALITY WITH OPELIKA MERCHANTS EVEN ON THE STREETS OF LAGRANGE.

This is an illustration of the disastrous effect of this system of rate making on localities discriminated against and the undue preference under it of localities favored by the discrimination.

In the "Alabama Midland Case" Judge Bruce, delivering the opinion of the circuit court, quotes what he terms the "trite saying" that "Competition is the *life of trade.*" Under this Southern basing point system of rate making, competition may be the life of trade at certain favored points like Atlanta or Opelika, but at other points *equally favored by nature* it appears to be the *death of trade.*

CHAPTER XXIII.

Discrimination against Lagrange in favor of longer distance strictly local stations—Hogansville, Palmetto, and Fairburn.

In this case the question is presented for the first time whether competition at a trade center or basing point like Atlanta can justify discrimination not only in favor of such trade center or basing point but also in favor of *longer distance strictly local stations.*

The rates from New Orleans to Lagrange, as we have seen, are materially higher than the rates for the haul through Lagrange and 13 miles on to Hogansville, 46 miles on to Palmetto, and 53 miles on to Fairburn.

Hogansville, Palmetto, and Fairburn are strictly local stations on one road alone, and are very much smaller and of very much less commercial importance than Lagrange. *Lagrange is, moreover, on two roads.*

It would seem that if the long and short haul rule of section 4 of the law can have operation in any case, it would be in such a case as this, as between Lagrange, on the one hand, and Hogansville, Palmetto, and Fairburn on the other.

In the "Alabama Midland Case" the rates involved were through rates to Montgomery, a trade center or basing point, and the rates to Troy, Ala. The circuit court held that competition at Montgomery justified rates relatively, and also in some instances absolutely, lower than the rates to Troy. After so holding, however, the court said that in a case involving discrimination between *local stations* "it might not be difficult to apply the law." (69 Fed. Rep., p. 232.)

The present case, however, is stronger than a case of discrimination, where the locality discriminated against is a strictly local station, and the localities in whose favor the discriminations are made are also strictly local stations, because *Lagrange is not a strictly local station, being on two distinct roads.*

The fact that basing the Lagrange rate on the Atlanta rate and making the Lagrange rate the through rate to Atlanta, plus the local back to Lagrange, results in higher rates to Lagrange than to the longer distance strictly local stations—Hogansville, Palmetto, and Fairburn—is a demonstration that *this system of rate making is radically wrong.*

CHAPTER XXIV.

Lagrange entitled to treatment as a competitive point.

No necessity, therefore, for making the Lagrange rate a combination rate.

Lagrange the only station situated on two distinct roads between Selma and Atlanta which is not given competitive rates.

The witnesses for the carriers testify that the points on the Western Railway of Alabama and the Atlanta and West Point road between Selma and Atlanta, which are competitive points and given the benefit of competitive rates, are *Montgomery*, *Opelika*, *Newnan*, and *Atlanta*.

(Answer of T. J. Hunter to cross-question 6, Rec. 352, 353.)

It will be perceived that Lagrange is the only point on that line which is situated on two distinct roads that is not given competitive rates. Opelika and Newnan are on two roads, and are given competitive rates. Lagrange is on the Atlanta and West Point road and the Macon and Birmingham road, and it is denied competitive rates.

Lagrange, being on two roads, is entitled to competitive rates, and therefore there is no necessity for making the Lagrange rate a combination rate. There is no necessity for making the Lagrange rate a rate based on the Atlanta rate, or the Montgomery rate, or the Opelika rate.

Lagrange, being located on two roads, the Atlanta and West Point and the Macon and Birmingham road, has connection by means of those roads, either as initial or terminal carriers, not only with New Orleans, but with all the markets north, south, east, and west with which Atlanta has connection.

The Macon and Birmingham road extends 105 miles from Lagrange to Macon, and is intersected at various points, Harris City, Woodbury, Yatesville, etc., by the Central of Georgia System, the Southern Railway, and the Georgia Southern and Florida road, and at Macon it meets the Georgia Railroad, the Central of Georgia Railroad, and the Southern Railway, forming lines to Charleston, Savannah, and other South Atlantic ports, and to Baltimore, Philadelphia, New York, and other Eastern seaboard ports.

The three principal roads leading out from New Orleans are the Louisville and Nashville, the New Orleans and Northeastern, and the Illinois Central, and by combination with these three roads as initial carriers, and the Atlanta and West Point and Macon and Birmingham roads as terminal carriers, the following 11 lines can be formed from New Orleans to Lagrange:

(Answer of Jessie M. Smith to interrogatory 26; Rec., 257–259.)

Lines, New Orleans to Lagrange.	Miles.	Total miles.
Louisville and Nashville R. R. to Montgomery	321	
Western of Alabama Ry. to West Point	88	
Atlanta and West Point R. R. to Lagrange	16	
		425
Louisville and Nashville R. R. to Montgomery	321	
Central of Georgia Ry. to Harris City	143	
Macon and Birmingham Ry. to Lagrange	22	
		486
Louisville and Nashville R. R. to Montgomery	321	
Central of Georgia Ry. to Fort Valley	167	
Southern Ry. to Yatesville	34	
Macon and Birmingham Ry. to Lagrange	61	
		583
Louisville and Nashville R. R. to Montgomery	321	
Central of Georgia Ry. to Macon	196	
Macon and Birmingham Ry. to Lagrange	105	
		622
Louisville and Nashville R. R. to River Junction	407	
Plant Lines to Albany	116	
Central of Georgia Ry. to Fort Valley	78	
Southern Ry. to Yatesville	34	
Macon and Birmingham Ry. to Lagrange	61	
		696
Louisville and Nashville R. R. to River Junction	407	
Plant Lines to Albany	116	
Central of Georgia Ry. to Macon	107	
Macon and Birmingham Ry. to Lagrange	105	
		735

Lines, New Orleans to Lagrange.	Miles.	Total miles.
New Orleans and Northeastern R. R. to Meridian	196	
Southern Ry. to Selma	103	
Western of Alabama Ry. to West Point	138	
Atlanta and West Point R. R. to Lagrange	16	
		453
New Orleans and Northeastern R. R. to Meridian	196	
Alabama Great Southern Ry. to Birmingham	153	
Central of Georgia Ry. to Opelika	129	
Western of Alabama Ry. to West Point	22	
Atlanta and West Point R. R. to Lagrange	16	
		516
Illinois Central R. R. to Jackson	183	
Alabama and Vicksburg R. R. to Meridian	96	
Southern Ry. to Selma	103	
Western Ry. of Alabama to West Point	138	
Atlanta and West Point R. R. to Lagrange	16	
		536
Illinois Central R. R. to Jackson	183	
Alabama and Vicksburg R. R. to Meridian	96	
Alabama Great Southern Ry. to Birmingham	153	
Central of Georgia Ry. to Opelika	129	
Western Ry. of Alabama to West Point	22	
Atlanta and West Point *R. R. to Lagrange*	16	
		599
Illinois Central R. R. to Winona	271	
Southern Ry. to Birmingham	208	
Central of Georgia Ry. to Opelika	129	
Western Ry. of Alabama to West Point	22	
Atlanta and West Point R. R. to Lagrange	16	
		646

The distances by the above lines range from *425 miles* by the short line, that involved in this case, to *735 miles* by the longest line, that by the Louisville and Nashville Railroad via River Junction.

Witnesses for the carriers testified to about the same number of lines that could be formed from New Orleans to Atlanta, and that all of those lines were practicable lines and competitors of the short line involved in this case—conceding, however, that the bulk of the traffic passed over this short line. The distances by those lines from New Orleans to Atlanta range from *495 miles* by the short line involved in this case, to *882 miles* by a line via the Illinois Central to Jackson, Tenn., and thence via Nashville and Chattanooga to Atlanta.

Mr. Knott testified that this last-named line, *822 miles in length*, was a practicable line, and a competitor of the short line. The longest of the 11 lines which we have given above from New Orleans to Lagrange is only *735 miles*, about 150 miles shorter than the distance of the line given by Mr. Knott over the Illinois Central via Jackson, Tenn., to Atlanta. If, as testified by Mr. Knott, this *822-mile* line is a practicable and competitive line on traffic from New Orleans to Atlanta, then all the above 11 lines are practicable and competitive lines from New Orleans to Lagrange.

The railroad officials, witnesses for the defendants, testified that all the lines from every direction that can be formed to Atlanta can also be formed to Lagrange, with either the Atlanta and West Point or the Macon and Birmingham road as terminal carriers, and they further admit that the agents of all these lines employed in soliciting business to Atlanta also solicit business to Lagrange.

(See testimony of R. E. Lutz, in answer to cross-interrogatories 80 and 81, Rec. 368.)

Lagrange is, therefore, a competitive point and entitled to the benefit of competitive rates.

CHAPTER XXV.

Excessiveness of Lagrange rates continued.

Cost of service to be considered in determining reasonableness of rates.

Distance adds to the cost of service and also to the fixed charges.

Cost of service to Lagrange, the shorter distance point, less than to Atlanta, Fairburn, Palmetto, Newnan, and Hogansville; therefore higher rates to Lagrange excessive.

The Commission, while recognizing the importance of distance, does not enjoin equal mileage rates.

The propositions would seem to be self-evident (1) that the cost of the service of transportation or movement is to be considered in determining the reasonableness of rates; (2) that the cost of the service of transportation depends largely on the distance or length of the haul; (3) that the distance from New Orleans to Atlanta, Fairburn, Palmetto, Newnan, and Hogansville being materially greater than to Lagrange, the cost of the actual service of transportation to Lagrange must be less than to those longer distance points.

It is not denied that distance, *other things being equal*, not only adds to the cost of movement or service of transportation, but also that the greater the length of a road the greater is the cost of its construction, and hence the greater the amount of what are known as "*fixed charges*," such as interest on capital invested, taxes, etc.

It is admitted:

(1) That, other things being equal, the *consumption of time* is greater the greater the length of the haul;

(2) That, other things being equal, the *consumption of fuel* is greater the greater the length of the haul;

(3) That, other things being equal, the *wear and tear* on locomotives, cars, track, roadbed, etc., is greater the greater the length of the haul;

(4) That, other things being equal, the cost of *keeping a road in repair* is greater the greater the length of the road;

(5) That, other things being equal, it requires *more locomotives and cars and more crews* for the running of trains on a long road than on a short one;

(6) That, other things being equal, distance adds to the cost of building roads, and therefore the *fixed charges*, such as interest on capital invested, taxes, etc., are greater the greater the length of the road; and

(7) That the *value of the service to the shipper*, as a general rule, is greater the greater the length of the haul.

It is thus seen that not only the expense of the actual service of transportation, but also the fixed charges, such as *interest on investment*, *taxes*, etc., are directly dependent on distance. These expenses and charges are necessarily *first to be determined* in making a reasonable rate. Distance, therefore, is a most important and controlling element in rate making.

This fact is universally recognized and constantly acted upon by all carriers. When rates are divided between carriers composing a through line, the proportion of each carrier is determined by mileage, and you can not find a tariff of rates which does not, as an almost invariable rule, provide higher charges as the length of the haul increases from station to station.

A rate can not be said to be reasonable in itself unless it pays the cost of movement or transportation of the traffic to which it is applied, and also its proportion of fixed charges, such as interest on bonds, taxes, etc.

If the rates for the longer haul by 13 miles to Hogansville, and the longer haul by 32 miles to Newnan, and the longer haul by 46 miles to Palmetto, and the longer haul by 53 miles to Fairburn, and the longer haul by 71 miles to Atlanta, are reasonable in themselves in the above sense, the legitimate inference is that the materially higher rates for the shorter haul to Lagrange are *excessive*.

Commission does not enjoin equal mileage rates.

Counsel for the carriers has contended in other cases that the Commission requires the carriers to charge *absolutely equal* mileage rates. There is no foundation for this charge.

The Commission, while recognizing the importance of distance, has not, in this case nor in any case, ordered equal mileage rates, but, on the contrary, has sustained the well-established rule recognized by all carriers, that *while the aggregate rates increase as the length of the haul increases, the rates per ton per mile decrease as the length of the haul increases.* On this point the Commission says, in the case of McMorran et al. *v.* Grand Trunk Railway Company of Canada et al. (3 I. C. C. R., 252), that—

> "Unless there be exceptional conditions which modify the rule, the rate per ton per mile grows less in proportion to the greater distance, while the aggregate of the rate increases with the greater distance;" and that "through rates *are not required to be made on the mileage basis*, but mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges."

This position of the Commission is conservative and manifestly correct, and nothing even squinting at *equal* mileage rates can be found in any ruling or decision or order of the Commission.

CHAPTER XXVa.

Insufficient or fallacious grounds upon which it is claimed that the Lagrange rates are reasonable.

The Lagrange rates are claimed by defendants to be reasonable on the following insufficient grounds:

(*a*) That they are combination of a reasonable through rate from New Orleans to Atlanta and a reasonable local rate from Atlanta back to Lagrange. *This we have shown* to be a *proof of excessiveness.* The combination is, moreover, *not the lowest combination.*

(*b*) That the rates from New Orleans to Lagrange are not higher per ton per mile than rates *charged by wagons and ox carts in the dim past* before the advent of railways. *Wagon rates can shed no light on the reasonableness of rail rates. There is no analogy between the two modes of transportation.*

(*c*) That they are lower than rates which would result from dividing the haul to Lagrange into four parts and combining the separate local rates of the defendants for these four hauls. *This we have shown to be no evidence of their reasonableness.*

(*d*) That traffic has moved under these rates to Lagrange; in other words, THAT THESE RATES ARE SIMPLY NOT PROHIBITORY. It is well settled that traffic will move under rates, no matter how excessive, provided they are not absolutely prohibitory.

(*e*) That Lagrange, *by virtue of her inherent force as a natural trade center*, has grown to some extent although handicapped by these excessive and discriminatory rates.

(*f*) Comparison of rates for the *425 miles* from New Orleans to Lagrange with rates for hauls of *from 527 to 1,161 miles* from Louisville, Baltimore, Philadelphia, New York, and Boston.

CHAPTER XXVb.

Opinions of railroad officials that Lagrange rates are reasonable.

These opinions naturally biased in favor of their own action and practices.

Reliance is placed largely upon the OPINIONS of railroad officials as showing the reasonableness of the Lagrange rates and of the so-called system of which they are the product.

Aside from the fact that these opinions are based on the insufficient reasons set forth in the preceding chapter, it is evident that railroad officials, however honest and intelligent, in testifying in these cases are subject to strong bias.

These witnesses are for the most part the very men who have made and are responsible for the rates in question. Where this is not the case, they are makers of rates on other roads and *are interested in the question.* They are naturally strongly biased in favor of their own action, and when they give their opinion as to the reasonableness of rates and as to other matters involved in the case, *those opinions are to be viewed and weighed in the light of the fact that they are opinions of interested parties naturally strongly biased.*

We do not intimate that these witnesses are dishonest, but only that they are human and subject to the human infirmity of bias. The law recognizes this human weakness and allows the fact of interest of a witness in a matter in issue to be given in evidence and considered by courts and juries.

As said by the circuit court in the "Chattanooga case," "there is in this no impeachment of the integrity of anyone. *It is not a question of intention, but whether the thing done is in contravention of the statute.*" (85 Fed. Rep., 110.)

CHAPTER XXVI.

Excessiveness of Lagrange rates continued.

The rates to Atlanta are reasonably high notwithstanding competition.

Therefore (1) materially higher rates for materially shorter haul to Lagrange are excessive.

Therefore (2) competition can not justify the discrimination shown in this case.

The ground upon which the plea of competition is based is that it forces carriers to charge to competitive points *rates lower than they might otherwise exact.* In the absence of competition carriers have no right to charge more than reasonable rates. Therefore competition, it is claimed, forces carriers to charge less than reasonable rates.

If the rates to competitive points are reasonably high in themselves, notwithstanding competition, then competition is no justification for a greater charge for the shorter haul. This proposition can not be successfully controverted.

We contend that the rates from New Orleans to Atlanta in question in this case are reasonably high in themselves—that is, they not only pay the cost of transportation or movement of the traffic to Atianta, but also a reasonable remuneration in excess of such cost, and that competition not having reduced them below this reasonable level is no justification for the materially higher rates for the shorter haul by 71 miles to Lagrange, and that therefore these higher rates to Lagrange are necessarily *excessive.*

If the materially lower rates for the materially longer haul to Atlanta yield the carriers a reasonable remuneration in excess of the cost of service, then the *same* rates to the shorter distance point, Lagrange, would yield a remuneration *in excess* of such reasonable remuneration, and rates to Lagrange, which are *materially higher* than rates to Atlanta, would yield *a still greater remuneration in excess* of such reasonable remuneration.

That the Atlanta rates are reasonably high in themselves, *notwithstanding competition*, is clear from the following facts:

1. The proof shows that *the bulk of the traffic of the defendants is competitive traffic*, and that under these rates to Atlanta and rates on the same basis to other competitive points applied to this competitive traffic, the business of the defendants has proven fairly remunerative.

2. The proof shows that the Atlanta rates were established by *agreement* between the carriers. The agreement was entered into for the purpose of doing away with unreasonably low rates, the product of competition, and substituting therefor reasonably remunerative rates.

3. The presumption is that the compensation charged for a service or thing is reasonably remunerative.

4. The rates in question from New Orleans to Atlanta *have been maintained for twelve years or more.*

5. The rates from New Orleans to Atlanta yield rates per ton per mile the average of which is from two to three times as high as the average revenue per ton per mile on roads in all sections of the country.

These five grounds upon which we base our claim that the Atlanta rates are reasonably high in themselves, notwithstanding competition, will be discussed in the following chapter of this argument.

CHAPTER XXVII.

Atlanta rates are reasonably high.

The prima facie presumption is that rates charged will be reasonably high.

The first ground upon which we base the proposition that the Atlanta rates are reasonably high is the *prima facie* presumption that the compensation charged for a service or thing is reasonably remunerative.

This presumption rests upon the same principle or belongs to the same class of presumptions as the presumption of *sanity*. An individual who would render services for a sum not reasonably remunerative—and that, too, not "incidentally, but for a long series of years"—would be held to be an incompetent business man, if not *non compos mentis*. There is no reason why the same rule should not be applied to carriers.

In the "Chattanooga Case" Judge Severens says on this point:

> "The charges accepted for the longer haul may be referred to for the purpose of considering the reasonableness of the charges made for the shorter haul. *Such comparisons are applied to every other kind of business*, and the fact that there may be competition in such business would not be a controlling consideration, *for the presumption would always be that the compensation charged for the service or thing is sufficient to be reasonable.*" (85 Fed. Rep., bot. p. 114.)

This presumption, that the compensation charged for a service or thing is reasonably remunerative, acquires increased

force and becomes conclusive when the compensation has been charged for a long series of years. The testimony in this case of railroad officials is that the rates from New Orleans to Atlanta have been in force *twelve years or more.*

The following is the extract from the testimony, on this point, of Mr. George P. Biles:

> "Cross-question 1. How long, or about how long, has the system of rates now in force to Atlanta from New Orleans existed, and state whether the rates under that system have been substantially the same during that time?
>
> Answer. So far as my information goes, the present adjustment of rates from New Orleans has been in effect *for about twelve years*, and has remained *practically intact*, except that the rates on classes B, C, D, and F have been *slightly* modified.
>
> Cross-question 2. How long have the rates from New Orleans to Atlanta been substantially the same as they are now?
>
> Answer. The rates from New Orleans have been, to the best of my information, substantially the same as now for twelve years."

Testimony of other witnesses is uniformly to the same effect. (See answer of J. M. Culp to cross-question No. 2, Rec., 387.)

CHAPTER XXVIII.

Atlanta rates are reasonably high, continued.

Atlanta rates established by agreement.

The presumption that the Atlanta rates are reasonably remunerative is further strengthened by the fact that they were originally established by agreement between the carriers.

Mr. G. P. Biles, general freight agent of the Cincinnati, New Orleans and Texas Pacific Railway Company, testifies:

> "The present rates from New Orleans to Atlanta are made the same as those in effect from Memphis, Tenn. * * * I believe it was *done by joint action of all the carriers interested.*" (Answer to cross-interrogatory 7, Rec., 394.)

The testimony of other witnesses shows that the rates from New Orleans to Atlanta were established by agreement between the carriers as members of the Southern Railway and Steamship Association, which association established rates to all competitive points in the Southern territory for a long period of time prior to October, 1895.

Unhealthy competition, resulting in what are known as "rate wars," may cause competing lines of transportation to enter into an agreement as to the rates to be charged by them, or, in other words, may bring about such agreement. The very object of the agreement, however, it will be seen, is to do away with competition which results in *ruinously low rates.*

Mr. J. M. Culp, traffic manager of the Southern Railway, testifies that the Southern Railway and Steamship Association, by which the rates to New Orleans were established—

> "Was formed as a means of preventing the roads *destroying each other by competition.*" (Answer to cross-question 11, Rec., 388.)

The object, then, of these railway associations and their agreements respecting rates is to get rid of the "ruinously low rates resulting from competition, and to provide for reasonably remunerative rates." *When carriers come together to agree upon rates which will be reasonably remunerative, there is nothing to prevent the accomplishment of that end.*

This court has held in the case known as the "Joint Traffic Case" (171 U. S., 505) that when carriers come together and agree upon the rates to be charged by them, *those rates will be higher than rates which are the result of active competition. This proposition is the basis of the decision of the court in that case.*

In that case, in speaking of the agreement in the Trans-Missouri Case (166 U. S., p. 209) and of the agreement in the Joint Traffic Association Case, this court says:

> "The natural and direct effect of the two agreements is the same, viz, *to maintain rates at a higher level than would otherwise prevail.*" (171 U. S., 565.)

And again:

> "The agreement" (Joint Traffic Association agreement) "*affects interstate commerce by destroying competition and by maintaining rates above what competition might produce.*" (171 U. S., 569.)

And again, the court speaks of the Joint Traffic Association agreement as one made—

> "For the purpose of *stifling competition* among themselves" (the competing lines), "and of thus keeping their rates and charges higher *than they might otherwise be under the laws of competition.*" (171 U. S., 571.)

We thus have the sanction of the highest judicial tribunal in this country, if not in the world, for our proposition, that, where rates are fixed by agreement, they will be higher than rates which might be produced under "the laws of competition."

The carriers are simply stultifying themselves in claiming that, when they come together to get rid of the ruinous effects of competition and to agree upon rates which will be reasonable, they will deliberately establish unremunerative rates and keep those rates in force twelve or fifteen years.

As indicating that competition affects the rates notwithstanding they are made by agreement, the circuit court of appeals for the fifth circuit, in the case of the Interstate Commerce Commission against the Western and Atlantic R. R. Co. et al., and two other cases (93 Fed. Rep., p. 88), says:

> "But *it is not shown or reasonably suggested* on what ground, or for what consideration, the competing carriers consented to accept a lower rate to these longer distance points than they charged to the shorter distance points, if they could just as well have agreed and contracted to charge as great or greater rates to the longer than to the shorter distance points." (Italics mine.)

We respectfully suggest that when carriers come together to agree upon rates to *large trade centers* they will naturally be controlled by considerations of reasonableness to a greater extent than when they establish rates to *comparatively insignificant local stations served by the road of one of such carriers alone.*

When carriers come together to agree upon rates to these trade centers, they will be influenced to establish rates not unreasonbly large on the ground of self-interest, if on no higher ground.

Among other things, exorbitant rates to large, influential trade centers *would cause the building by those trade centers of other lines of transportation.* Moreover, presidents and other officials and stockholders of roads serving these influential trade centers are frequently, if not generally, the owners of large properties and business interests at those trade centers,

are therefore directly interested in their continued growth and prosperity. Again, the interests of the roads will be promoted by the continued prosperity and building up of the trade centers, because it will result in an increase of the tonnage of traffic transported to those trade centers. The business and prosperity *of shippers* to these trade centers will also be promoted by reasonable rates, and this, too, will add to the revenue of the carriers. These and other considerations will induce competing carriers to establish rates to large trade centers not unreasonably high.

At comparatively insignificant local stations, however, on one line of railway alone, like those involved in the cases, *supra*, before the circuit court of appeals, the carriers are at liberty to charge *all the traffic will bear. The witnesses for the roads testified in those cases that the rates to the shorter distance local stations were reasonable because "traffic moved under them to those stations"—in other words, because the rates were simply not prohibitory.*

These comparatively insignificant local stations on one line of road alone have, as the homely saying is, "to grin and bear it." They are not sufficiently powerful or influential to build or warrant the building of other lines of transportation, and officials and stockholders of railroads are not, as a rule, personally interested in their growth and prosperity.

In any event, if competition should to some extent influence the rates established by agreement between the carriers, it *is not reasonable to suppose that it would cause those rates to be reduced below a reasonable remunerative level, particularly in view of the fact that the very object of the agreement is to substitute reasonably high rates in place of unreasonably low rates, the product of competition.*

CHAPTER XXIX.

Atlanta rates are reasonably high, continued.

Atlanta rates and rates on the same basis to other competitive points, when applied to the bulk of the traffic of the defendants, have proven fairly remunerative.

The testimony of railroad officials is uniform to the effect that the competitive traffic of the defendants largely exceeds its noncompetitive local traffic.

T. J. Hunter, auditor of the Western Railway of Alabama and the Atlanta and West Point Road, in Exhibit 4 to his deposition before the Commission, gave the following as the tonnage of traffic to Atlanta and Lagrange, respectively, for the year ending June 30, 1895:

To Atlanta, 6,773 tons.

To Lagrange, 100 tons.

(Rec., 142.)

The same witness (Hunter), in Exhibit C to his deposition in the case before the court, gave the following as the total tonnage of traffic from all points for the month of January, 1899, to competitive and noncompetitive stations on the Western Railway of Alabama and the Atlanta and West Point road, the competitive stations being Selma, Montgomery, Opelika, Newnan, and Atlanta:

Total traffic to—	Tons.
Atlanta	7,539
Newnan	1,829
Opelika	2,672
Montgomery	10,391
Selma	3,348
Total to competitive points	25,779
Total to local points	8,269
Grand total	34,048

(Rec., 354–356.)

From this statement it appears that the tonnage of traffic to these five competitive points is three times as great as the tonnage of traffic to all the numerous local stations on these roads, including Lagrange.

Mr. Lutz testifies, in answer to cross-interrogatory 64 in his deposition in the case in court, that "the *through traffic is greater in amount and volume than the local.*"

Under these competitive rates applied to Atlanta and other points treated as competitive between New Orleans and Atlanta, the business of the defendant roads has proved fairly remunerative.

On this point the Commission finds:

> "Each of the defendant roads is solvent. For the year ending June 30, 1895, the Louisville and Nashville, a large system, of which only a small part is involved in this case, paid interest on its large funded debt (over $79,000,000) and discharged its other accruing liabilities. The Western of Alabama for that year paid interest on $1,543,000 bonded debt and 2 per cent dividend on $3,000,000 capital stock and had a considerable surplus on hand. The Atlanta and West Point paid in that year 6 per cent dividend on $1,232,200 capital stock and 6 per cent interest on the same amount of 'certificates of indebtedness,' and had a considerable sum remaining."

(See Report and Opinion of Commission, p. 15, Rec., 37.)

The Atlanta and West Point road, in fact, for the year ending June 30, 1895, paid *12 per cent dividends* on its capital stock of $1,232,200. It paid 6 per cent dividends (*eo nomine*) on that stock and in addition 6 per cent interest on the same amount on what are termed "certificates of indebtedness." Those certificates of indebtedness represent earnings of the road, which, instead of being paid to the stockholders, were used in building bridges and other improvements on the road, and they were issued to the stockholders, and the 6 per cent

interest thereon was paid to the stockholders, thus making the amount paid to the stockholders 12 per cent on the capital stock.

It can not be claimed that rates which, when applied to three-fourths of the business of these carriers, yield such results are unreasonably low.

CHAPTER XXX.

Atlanta rates are reasonably high, continued.

Rates per ton per mile under Atlanta rates much higher than revenue per ton per mile of roads in Southern territory and throughout the United States.

That the rates from New Orleans to Atlanta are reasonably high is further apparent from the fact that they yield rates per ton per mile the *average* of which is much higher than the average revenue per ton per mile of all roads not only in the Southern territory, but also throughout the United States.

The class rates *per ton per mile* under the rates from New Orleans to Atlanta are as follows:

Rates per ton per mile from New Orleans to Atlanta.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
4.15	3.56	.31	2.58	.21	.17	.97	1.25	.97	.81	.18	1.97	1.61

The average of these rates per ton per mile to Atlanta is a *little over 2 cents*, which is *more than twice* as large as the average of the revenue per ton per mile on roads throughout the United States from the year 1890 to 1897, both inclusive, which latter average is *.864 cent*, or, in other words, a little over *eight-tenths of 1 cent.* (Rec., 244.)

This average of the rates per ton per mile to Atlanta, *2 cents*, is also a little *over three times* as large as the average of the revenue per ton per mile for the year 1897 on roads in West

Virginia, Virginia, North Carolina, and South Carolina, which latter average is *.648 cent*, or, in other words, a fraction over *six-tenths of 1 cent.* (Rec., 244.)

The average of the rates per ton per mile to Atlanta, *2 cents*, is also *more than twice as large as* the average of the revenue per ton per mile for the year 1897 on roads in Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida, which latter average is *.864 cent*, or, in other words, a fraction over *eight-tenths of 1 cent.* (Rec., 244.)

CHAPTER XXXI.

Atlanta rates are reasonably high, continued.

Summary of situation.

To sum the matter up, the facts and every reasonable presumption tend to show that the rates from New Orleans to Atlanta are reasonably high—that is, yield the carriers a reasonable compensation in excess of the cost of service.

(1) *They were in the first place established by agreement, which agreement was entered into to avoid the ruinously low rates produced by active competition.*

(2) *They have been maintained for twelve years or more.*

(3) *During this twelve years or more they have been applied to the bulk of the traffic hauled by the defendants, and under them the defendants have prospered financially.*

(4) *They yield a rate per ton per mile from two to three times as high as the average revenue per ton per mile of roads in all sections of the country.*

The situation in a nutshell is that at points like Atlanta, where competition is met, the carriers have been compelled to get together and agree upon reasonable and not excessive rates, and at local points, or points which they agree to treat as local, they are under no such compulsion, and charge *all that the traffic will bear*, or under which it will move—in other words, rates which are simply not prohibitory.

The witness, Jesse M. Smith, testifies that at local points "*there is nothing to prevent the carrier from fixing and maintaining rates as high as the traffic will bear, if it so desires.*" (Rec., 254.)

CHAPTER XXXII.

Excessiveness of Lagrange rates, continued.

The other horn of the dilemma.

If Atlanta rates are unreasonably low, there must be a deficiency thereunder which has to be made up by an increase of rates to Lagrange and other points, and this results in excessive rates to Lagrange.

Competition can justify neither excessive rates to local points nor unreasonably low rates to competitive points.

This court has held in the "Nebraska maximum-rate case" that intrastate or domestic traffic can not be taxed with a deficiency resulting from unreasonably low rates on interstate traffic.

The rates to Atlanta are either reasonably high or unreasonably low.

If, notwithstanding competition, they are reasonably high, then, as we have shown, competition is no justification for the materially higher rates to Lagrange.

If, on the other hand, they are unreasonably low, there must result a deficiency under them, to be made up by higher rates on other traffic.

Claim of Mr. Lutz that Atlanta rates are starvation rates.

Mr. Lutz, traffic manager of the Western Railway of Alabama and the Atlanta and West Point road, however, testified on cross-examination before the Commission:

> "If we were to accept on local business rates proportionately as low as we accept on through business, it would simply mean *starvation*." (Rec., top p. 105.)

And again:

> "If we made rates there (to Lagrange) on the same basis as to Atlanta, we could not sustain the road. *We could not live* if we made rates on the same basis (to Lagrange) as to Atlanta." (Rec., mid. p. 110.)

Mr. Lutz thus expresses the opinion that the rates to Atlanta and other competitive points, or points treated as competitive, are, to use his forcible language, "*starvation rates*," and that the road could not "*live*" on rates to local stations proportionately not higher than the rates charged to Atlanta and other points treated as competitive.

Mr. Lutz further testified, on direct examination before the Commission, that for the year ending June 30, 1895, the traffic from New Orleans to Lagrange amounted to only $262.70, while to Atlanta for that year it amounted to $13,470.19. (Rec., 103.)

Mr. Lutz also stated before the Commission in this connection that—

> "The revenue derived from the traffic from New Orleans to Atlanta is *about fifty times as much* as from New Orleans to Lagrange." (Rec., 103.)

The foregoing extracts from the testimony of Mr. Lutz, considered together, present this phenomenal, *if not miraculous*, situation: THE ROADS LIVE ON STARVATION RATES APPLIED TO TRAFFIC TO ATLANTA, WHILE THEY COULD NOT LIVE

ON THE SAME RATES APPLIED TO TRAFFIC TO LAGRANGE, ALTHOUGH THE TRAFFIC TO ATLANTA IS SIXTY TIMES AS LARGE IN AMOUNT AS THE TRAFFIC TO LAGRANGE.

Competition can not justify unremunerative rates to competitive points.

Conceding, however, for argument's sake, that Mr. Lutz is correct, and that the rates to Atlanta and to other points treated as competitive are "*starvation rates*," and that the roads could not live if those rates were applied to local traffic, it must follow that those starvation rates result in a deficiency of revenue, which, *if the roads live*, must be made up by an increase of rates to other points.

We contend that competition can justify neither unreasonably high rates to noncompetitive points nor unreasonably low rates to competitive points, the latter rates resulting in a deficiency which must be taxed upon traffic to noncompetitive points.

In support of this proposition we cite the opinion of this court in *Smyth* v. *Ames*, known as the "*Nebraska Maximum Rate Case*," reported in 169 U. S., p. 541.

In that case the appellee contended that the inadequacy of the local or domestic rates in question was made up by the rates on interstate traffic, and that this justified the inadequacy of the domestic or local rates. On this point the Supreme Court says:

> "If we do not misapprehend counsel, their argument leads to the conclusion that the State of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company earned on its interstate business enough to give it just compensation in respect to its entire line and all its business, interstate and domestic. We can not concur in this view. In our judgment it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of

persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier or to the profits derived by it. The State can not justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. *Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business.* So far as rates of transportation are concerned, *domestic business should not be made to bear the losses on interstate business, nor the latter the losses of domestic business.*" (169 U. S., p. 541.)

In this connection we quote as pertinent the following extract from the opinion of *Judge Severens* in the "*Chattanooga Case*" (*85 Fed. Rep., p. 115*), and from the opinion of *Judge Goff* in the "*Behlmer Case*" (*83 Fed. Rep., p. 898*):

Judge Severens says:

"If carriers engage in a competitive struggle for business at a place where they meet, and underbid each other to a point which is not in itself remunerative, they can not turn back on the line and, taking advantage of the conditions existing at other localities, arising either from the fact that there is no opportunity for competition or *from the fact that by concert of the carriers there is none*, charge such rates for the shorter haul as shall make good their lack of profits in the competitive business. Such a course can not be sanctioned without 'tearing up by the roots' the whole scheme of the commerce act." (Italics mine.)

Judge Goff says:

"The appellees contend that the smaller charge for the greater distance is, in this case, of great importance to the city of Charleston (the longer-distance point), as well as to the section of country adjacent thereto, as by means thereof the merchants of that city are enabled

to build up a trade that otherwise would be lost to them. That may be true, but is not the same argument applicable to Summerville (the shorter-distance point) and other interior cities along the lines of the roads operated by the appellees between Charleston and Memphis? *In order to build up one locality we should not tear down many others; and justice to one section should not be purchased at the expense of another.*" (Italics mine.)

See also *E., T., &c., Ry. Co.* v. *I. C. C.* (181 U. S., p. 20).

CHAPTER XXXIII.

The order of the Commission.

It contains six subdivisions.

The order of the Commission contains six subdivisions. (Rec., 48–51.)

(1) The Commission found that the rates to Lagrange were excessive, or unreasonably high in themselves, in violation of section 1 of the law, and therefore ordered the defendants to cease and desist from charging unreasonable rates to Lagrange.

In *Interstate Commerce Commission* v. *Railway Company* (167 U. S., 479) the Supreme Court held that the Commission had no power to enforce section 1 of the law by prescribing reasonable maximum rates to be charged by carriers. The Commission, therefore, can only enforce section 1 *by forbidding the exaction of rates which it has found to be unreasonably high.* In the language of Judge Severens in the "Chattanooga case," the Commission only had the power to forbid "the continuance of an unlawful practice." (85 Fed. Rep., 110.)

Throughout the argument of the question as to the power of the Commission to prescribe reasonable rates under section 1 of the law, it was admitted by counsel for the carriers that the Commission had the power, under that section, to order carriers to cease and desist from charging rates found to be unreasonably high.

(2) In the second subdivision of its order the Commission directed the defendants to cease and desist from charging the specific rates (naming them) from New Orleans to Lagrange,

upon the ground that those rates were shown to be unreasonably high. This subdivision of the order is also under section 1 of the law.

(3) In the third subdivision of its order the Commission directed the defendants to cease and desist from charging from New Orleans to Lagrange *rates made up of the through rate for the haul from New Orleans through Lagrange to Atlanta, plus the local rate back to Lagrange.* This was on the ground that such a combination rate was unreasonable in itself and unduly prejudicial to Lagrange.

(4) In subdivision 4 the Commission ordered the defendants to desist from charging higher rates from New Orleans to Lagrange than they charged from New Orleans for the longer haul through Lagrange to Hogansville, or Newnan, or Palmetto, or Fairburn, Ga.

(5) In the fifth and sixth subdivisions of the order the defendants are required to desist from charging rates from Lagrange which result in an undue or unreasonable prejudice or disadvantage to Lagrange and which give an undue or unreasonable preference or advantage to merchants at Atlanta, Fairburn, Palmetto, Newnan, or Hogansville. These subdivisions of the order are under section 3 of the law forbidding undue preferences in rates as between different localities.

(6) The Commission being denied the power, as we have seen, to prescribe reasonable maximum rates, it then proceeds in its order to *recommend* that the class rates to Lagrange shall not exceed the class rates now in force to Atlanta, setting forth said class rates specifically, and also that the defendants "make corresponding reductions or relatively reasonable and just charges in commodity rates," namely, rates on sugar, etc.

CHAPTER XXXIV.

Power of the Commission to enforce sections 3 and 4 of the law recognized by this court.

In the case of the Interstate Commerce Commission *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company (167 U. S., p. 506), this court, while denying power in the Commission to enforce section 1 of the law *by prescribing* rates to be charged by carriers, "maximum, minimum, or absolute," expressly recognizes the authority of the Commission to enforce the provision of section 3 of the law, forbidding undue preferences in rates as between localities, and the long and short haul rule of section 4.

In reference to these matters the court, after denying power in the Commission to prescribe rates, says:

> "But has the Commission no functions to perform in respect to the matter of rates; no power to make any inquiry in respect thereto? Unquestionably it has, and most important duties in respect to this matter. It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business. And with this knowledge it is charged with the duty of seeing that there is *no violation of the long and short haul clause;* that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that *no undue preferences are given to one place or places* or individual or class of individuals, but that in all things *that equality of right which is the great purpose of the interstate-commerce act shall be secured to all shippers.*"

CHAPTER XXXV.

Court may modify order by enforcing one or more subdivisions.

In the case known as the "Social Circle Case" (162 U. S., 184), the order of the Commission had two subdivisions. In one it forbids the charging of higher rates from Cincinnati to Social Circle, the shorter distance point, than were charged for the longer haul through Social Circle to Augusta, and in the other it directed that the rate from Cincinnati to Atlanta should be reduced from $1.07 to $1 per 100 pounds. The circuit court of appeals at New Orleans rendered a decree enforcing the first subdivision of the order only. This court sustained this decree of the circuit court of appeals.

Proceedings before the court de novo, and the orders of the Commission may be modified by the courts.

It is well settled, moreover, that in proceedings before the courts to enforce orders of the Commission the matter is heard *de novo*, and the proceeding is an "original and independent proceeding," based on new pleadings and new evidence, and it is the duty of the courts to "do justice as courts of equity upon the entire body of the evidence."

Social Circle case (56 Fed. Rep., 934, 935)

I. C. C. *v.* C. N. O. & T. P. Ry. Co. et al. (64 Fed. Rep., 984, 985).

Shinkle, Wilson & Kries Co. et al. *v.* L. & N. R. R. Co. (62 Fed. Rep., 693).

I. C. C. *v.* Ala. Mid. Ry. Co. (168 U. S., 175).

In the "Alabama Midland case" (168 U. S., 175) this court says:

> "It has been uniformly held by the several circuit courts and the circuit courts of appeal in such cases that they are not restricted to the evidence adduced before the Commission nor to a consideration merely of the power of the Commission *to make the particular order in question*, but that additional evidence may be put in by either party, and that the duty of the court is to decide as a court of equity upon the entire body of the evidence."

That the court may modify an order made by the Commission, so as to *adapt it to the ends of justice under the entire body of the evidence before the court*, seems clear from the language of this court above quoted, namely, "that the court is not confined to a consideration merely of the power of the Commission *to make the particular order in question*," but "is to decide, as a court of equity, *upon the entire body of the evidence*."

CHAPTER XXXVI.

The order of the Commission—How it should be complied with.

Lagrange rates being excessive should be reduced to at least the level of Atlanta rates.

If, as we have endeavored to show, the Lagrange rates are excessive, the order of the Commission should be complied with by reducing the Lagrange rates to at least the level of the Atlanta rates.

This will bring the rates in conformity with the rule of the fourth section, by doing away with the higher rates for the shorter than the longer haul.

The reduction of the Lagrange rates to the level of the Atlanta rates will also do away, to a certain extent, with the undue preference in favor of Atlanta and the unjust prejudice to Lagrange resulting from the present adjustment of rates, and will thus measurably, if not entirely, bring them in conformity with the provision of section 3 of the law, forbidding undue preferences in rates as between different localities.

This will be seen from the fact that if the rates to Lagrange are no higher than to Atlanta, Lagrange merchants can lay down goods in territory intermediate and equidistant from Lagrange and Atlanta at aggregate rates not higher than those on which Atlanta merchants can reach such territory.

CHAPTER XXXVII.

Objections to reduction of Lagrange rates.

Claim that reducing the Lagrange rates will necessitate reductions in rates to all strictly local stations.

Lagrange a competitive point, and therefore a reduction in Lagrange rates will not call for a reduction in rates to strictly local stations.

If Lagrange rates alone are reduced, loss will be insignificant.

The orders of Commission do not affect intrastate traffic.

The contention in behalf of the carriers in this case is that a reduction in the Lagrange rates is not practicable because it would necessitate a corresponding reduction to all local stations and would thus result in an unreasonable or ruinous loss of revenue to the roads.

This contention rests upon the *assumption that Lagrange is itself a strictly local station*, and that, therefore, a reduction in Lagrange rates must necessarily be accompanied by a corresponding reduction in rates to all local stations.

This assumption, however, is without foundation, because, as we have shown, *Lagrange is not a strictly local station*, but is situated on two distinct roads, and, as testified by the railroad officials, all the lines from every direction which can be formed to Atlanta can also be formed to Lagrange, and all these lines, through their agents, solicit and compete for business to Lagrange as well as for business to Atlanta. (See Chapter XXIV.)

Lagrange being a competitive point, or being entitled to treatment as a competitive point, the reduction of the Lagrange rates will not call for a reduction in rates to the strictly local stations. The loss of revenue, therefore, if any, will only be that which will result from the reduction in the rates on the traffic to Lagrange alone. This loss will be trivial, a mere bagatelle to the roads, and should not be allowed to stand in the way of the removal of the discrimination against Lagrange.

Mr. T. J. Hunter, auditor of the Atlanta and West Point Railroad and the Western Railway of Alabama, was called upon, on cross-examination, to furnish a statement showing the loss which would result to his roads on business from New Orleans to Lagrange if the same rates were charged to Lagrange as to Atlanta. He furnished that statement for the year ending April 30, 1899, as "Exhibit D" to his deposition. *That exhibit shows that the total loss for that year would have been only the insignificant sum of $48.02.* (Rec., 356.)

"Exhibit D" to Hunter's testimony in court.

Revenue to Lagrange under existing rates	$188.52
Revenue to Lagrange based on Atlanta rates	140.50
	48.02

Unreliable and exaggerated estimate of loss if rates to all local stations were reduced to the basis of rates to competitive points.

On this point we quote below from page 22 of the "Report and Opinion" of the Commission in this case (Exhibit "C" to the Bill of Complaint):

> "Assertion is made that if rates at all local stations on the line were adjusted so as not to exceed rates to and from competitive points the result would be a loss of $63,331.56. *The items on which these calculations were based are not in evidence*, the losses so stated are necessa-

rily estimated and assumed, and, besides, *they embrace traffic and circumstances which do not relate to traffic and transportation from New Orleans to Lagrange and Atlanta, and which are not within the scope of this proceeding.* If the figures in testimony relating to revenue from New Orleans traffic to Atlanta and Lagrange are correct, defendants would, by *increasing rates to Atlanta* to the present Lagrange rates from New Orleans, without the concurrent action of competing lines to Atlanta, lose $13,470.19, more or less, in a given year, for shippers would doubtless choose the cheaper routes. On the other hand, if defendants *should reduce* New Orleans-Lagrange rates to the New Orleans-Atlanta rates, they would by such action only lose the difference between the present Atlanta and Lagrange rates, and the total earnings on freight from New Orleans to Lagrange are stated in testimony to have been only $262.70." (Rec., 43, 44.)

Orders of Commission do not affect intrastate traffic.

It is constantly to be borne in mind that the orders of the Commission do not apply to *intrastate rates*, but only to *interstate rates*. They do not apply to rates between the stations in the State of Georgia, for example, from Atlanta to Fairburn, or to Palmetto, or to Newnan, or to Hogansville, or to Lagrange, or to West Point, or between any of those stations, nor to stations in Alabama between Opelika and Montgomery, or Opelika and Mobile, or Montgomery and Mobile, etc.

We contend, however, that a reduction of the Lagrange rates, so as to place her in the position of relative equality with her competitors, Atlanta and Opelika, will promote her prosperity, and in this way increase her tonnage of traffic to such an extent that the roads, instead of losing revenue, will eventually, if not immediately, realize an increase of revenue. This will be made the subject of the following chapter.

CHAPTER XXXVIII.

The order of the Commission continued.

Reduction of Lagrange rates will not eventually result in loss of revenue to the carriers.

Such reduction will increase the prosperity of Lagrange and thereby increase its tonnage of traffic.

Opinion on this subject of this and other courts.

Views of Aldace F. Walker on this subject.

As stated in the preceding chapter, the main, if not only, objection to compliance with the order of the Commission by reducing the rates to Lagrange is that it will result in an unreasonable, if not ruinous, loss of revenue to the carriers.

The railroad officials examined as witnesses always express the opinion that such will be the result, but they invariably ignore the well-established facts that lowering the rates to the shorter distance points so as to place them on a basis of relative equality with their competitors in business, the longer distance competitive points, *will increase the tonnage to the shorter distance points and thus augment the revenue of the carriers.*

Reduction of rates to shorter distance points so as to place those points on a basis of relative equality with surrounding points in the matter of rates will increase the tonnage of traffic to the shorter distance points in two ways; *first*, by lowering the price of goods at those points and thus increas-

ing their consumption, and, *second*, by promoting the growth and prosperity of such points, and *thus increasing the number of consumers.*

It would seem unnecessary to cite authority or to introduce testimony in support of so plain a proposition. We will ask attention, however, to the views on this subject of THIS COURT, and also of the Hon. Aldace F. Walker, who for many years previous to his death was high authority in railway circles on all matters pertaining to the business of transportation.

Views of this court.

In the case known as the "*Joint Traffic Association case*" (171 U. S., 505) this court, Mr. Justice Peckham delivering the opinion, says:

> "The result of lower rates is generally a *greater demand* for the articles transported, and this greater demand can only be gratified by *a larger supply*, the furnishing of which increases commerce." * * * (171 U. S., pp. 576.)

This proposition, that lower rates increase the demand for articles transported and consequently *the tonnage of such articles transported*, is the basis of the decision of this court in that case, it being held that the contract or agreement of the Joint Traffic Association under consideration tended to stifle competition and thus maintain high rates and thereby to restrain interstate commerce *in lessening the tonnage of such commerce.* In other words, the basis of the decision of this court was that the agreement of the association prevented a reduction of rates on interstate commerce, and in so doing *lessened the amount of such commerce which would be transported under low rates.*

In *Chicago, etc.*, v. *Wellman* (143 U. S., 343) this court says:

> "May it not be possible—*indeed, does not all experience suggest a probability—that a reduction of rates will increase the amount of business and therefore the earnings?*"

Opinion of Aldace F. Walker.

Mr. Aldace F. Walker, who was at one time a member of the Interstate Commerce Commission, but resigned that position to accept service from a railway association, and who became an authority of great weight in railway circles, in an opinion delivered by him as a member of the Commission, says:

> "The chief obstacle in the way of a general compliance with the rule of the fourth section is found in the question of revenue. *Carriers in the Southern States employ that argument in every case when conformity to the law is suggested* * * *. They insist that any reduction of rates means loss of revenue * * *. But it is not clear that the application of the general rule of the law would involve *permanent* loss of revenue. *The stimulus given to business at intermediate points will increase traffic largely. That proposition has been so often practically demonstrated that no intelligent observer can reject it* * * *. At the present the amount shipped to intermediate points is relatively very small. Giving such points the rates charged at more distant places, if adopted and maintained as a general principle, would necessarily encourage local industry and enterprise."
>
> (In re tariffs and classifications of Atlanta and West Point Railroad et al., 3 I. C. C. R., pp. 48, 49.)

Opinion of Judge Severens:

> "The court is very strongly inclined to the belief that *the interests of the carriers* would in the long run be better promoted by adhering more closely to the rules of the statute, and public policy would also be advanced not only in the encouragement which would thus be given to the distribution of commerce and population, but also in extending that *equality of privilege* which it is one of the prime objects of the act to regulate commerce to promote."
>
> (85 Fed. Rep., p. 113.)

CHAPTER XXXIX.

Lower rates will increase tonnage of traffic of carriers, continued.

Testimony of Lagrange merchants and business men on this point.

The Lagrange merchants and business men examined as witnesses in this case all testify—

(1) That transportation rates enter into and affect the prices at which they can sell their goods to consumers.

(2) That a reduction of rates to Lagrange so as to make them not higher than the Atlanta rates "will enable Lagrange merchants to sell goods cheaper than they now can, and that this will enable them to compete with the favored cities that are now underselling Lagrange merchants."

(3) That the lower the prices of goods the greater is the consumption.

(4) That low rates to a locality will induce immigration to and the investment of capital at such locality, and will promote its growth and prosperity in every respect, while relatively high rates will have the contrary effect.

(5) That, consequently, a reduction in the Lagrange rates so as to make them not higher than the Atlanta rates will increase the tonnage of traffic to Lagrange and correspondingly augment the revenue of the carriers.

(See testimony of Lagrange merchants and business men, Messrs. Fuller E. Callaway, E. R. Bradfield, J. H. Edmundson, W. V. Gray, J. E. Dunson, H. H. Childs, B. H. Seay,

M. L. Flemming, H. D. Glanton, H. V. Truitt, and T. S. Bradfield, in answer to direct interrogatories from 21 to 25, both inclusive.) (Rec., 286–287, 292–293, 308–309, 318–319, 324, 329, 334-335, 339-340, 345.)

Contention that because the reduction in rates would be so small on a single article weighing only a few pounds, therefore there would result no material reduction in price or benefit to the consumer.

Counsel for the carriers contends that because the reduction of the rates to Lagrange so as to make them not higher than the rates to Atlanta would amount to an insignificant sum on a single article weighing only a few pounds, like a pair of shoes, therefore there could result no material benefit to *consumers* at Piedmont from such reduction.

It would seem to be unnecessary and a waste of time to call attention to the fallacy of such a contention.

It is clear that a reduction in the Lagrange rates so as to make them not higher than the Atlanta rates will amount to a considerable sum to *Lagrange merchants* who sell goods to a large number of consumers, and that whatever increases the prosperity of the merchants and business men of a locality, will indirectly, if not directly, benefit and build up the entire community.

The prosperity of a community or town is necessarily dependent upon that of its merchants and business men, who give employment to its laborers, and who build its stores, business houses, and manufactories.

CHAPTER XL.

Carriers in all cases attempt to deter the courts from enforcing orders of the Commission on the ground that such enforcement will result in a ruinous loss of revenue.

Their prophecies of loss or disaster unfulfilled.

As said by Mr. Walker in the extract from his opinion quoted in the preceding chapter, the carriers in all these cases where an order of the Commission requiring a compliance with the law is sought to be enforced, object that it will result in a ruinous loss of revenue.

This objection was urged in the Social Circle case. The order in that case forbade higher rates to Social Circle than for the haul through Social Circle to Augusta. It was said that if the order was enforced it would call for a reduction in rates along the entire line of railway of the defendant and result in an unreasonable loss of revenue. *This court decreed the enforcement of the order, but the direful consequences predicted have not, so far as we have heard, been realized.*

So when this court rendered the decision in the Joint Traffic Association case, declaring the agreement of that association unlawful because it stifled competition and was, therefore, in restraint of trade and commerce, there was great apparent consternation among railway magnates. They held meetings at New York and other commercial centers and were unanimous in declaring that the decision would result in immense loss to the carriers, if it did not, in fact, entirely bankrupt them.

The roads have been more prosperous since than before that decision.

At least three-fourths of the States have enacted laws creating railroad commissions with power to regulate transportation of domestic traffic within the States and giving those commissions in many cases greater power than that possessed by the Interstate Commerce Commission, namely *the power to prescribe rates.*

The court may take judicial notice of the fact that the carriers have invariably opposed this legislation on the ground that it would work great injury not only to the carriers, but to the States themselves by preventing the further investment of capital in railways.

The census shows that more capital has been invested in railways, more miles of railway have been built, and the roads themselves have been more prosperous since the enactment of those laws than ever before.

Any interference with the carriers by Congress or State legislatures, in the way of regulation, no matter how necessary, is resented and persistently resisted, *and the attempt is invariably made to deter the courts from the enforcement of such regulation by the prophecy of irreparable loss.*

All these prophecies remain unfulfilled.

CHAPTER XLI.

Discrimination to the extent practiced may be unlawful, although some discrimination may be justified.

Whether discrimination to the extent practiced is justifiable, a question to be determined by the courts or the Commission.

It is manifest that although a substantial dissimilarity of condition resulting from competition may exist the extent of the discrimination may be in excess of what is warranted by such dissimilarity of condition.

In the "Chattanooga case" (85 Fed. Rep., p. 118) Judge Severens says on this point:

> When a violation of the long and short haul provision is charged, competition is one of the elements which enter into the determination of the question whether the conditions are similar, and if dissimilarity is found, *then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of.* * * *

When the matter is up for investigation by the Commission or the courts, the question whether discrimination to the extent practiced by the carriers is justifiable is to be determined by those tribunals.

This court in the "Alabama Midland case" (168 U. S., p. 173) states "*that it would not approve the position that the determination of the extent to which discrimination is justified by circumstances and conditions should be left to the carrier.*"

In the concluding clause of the proviso to the fourth section of the law the authority is expressly conferred upon the Commission to prescribe the *extent* of the discrimination which may be justified under that section, as follows:

> "The Commission may from time to time prescribe the *extent* to which designated common carriers may be relieved from the operation of this" (fourth) "section of the act."

This is an express recognition in the law itself of authority in the Commission to consider and prescribe the extent to which discrimination may be practiced under the fourth section, even where the circumstances and conditions are substantially dissimilar. If the circumstances and conditions are not substantially dissimilar, no discrimination at all can be practiced.

The amount or extent of the discrimination is, therefore, a matter to be considered and scrutinized by the court in this and all similar cases. If carriers are to determine the extent of the discrimination a dissimilarity of condition in a given case may justify, then, whenever such dissimilarity is shown, the case is taken from under the law, and neither courts nor Commission have the power to interfere, and carriers are left at liberty to practice discrimination to any extent they please over and above the amount justified by the dissimilarity of condition.

In this connection the following extract from the opinion of Judge Severens in the "Chattanooga case" is apropos:

> "The argument of counsel for the carriers is in effect that the *extent* of the discrimination must be confided to the judgment of the railroad officials, whose ability and experience best qualify them for the task. If this be so, there is nothing for the Commission or the court to do but to take notice of the fact that the conditions are dissimilar, and abandon all further inquiry. It is fundamental that no such proposition as this can be admitted." (85 Fed. Rep., 117.)

CHAPTER XLII.

Distinctions between sections 3 and 4 of the law—the former ex vi termini requires consideration of the extent of the prejudice resulting from the discrimination.

Section 3 may apply where section 4 does not.

The attention of the court is asked to a material distinction between the language of section 3 and the language of section 4 of the law.

Section 4 forbids the greater charge for the shorter haul "*under substantially similar circumstances and conditions.*"

Section 3 forbids "*any undue or unreasonable prejudice or disadvantage in any respect whatsoever.*"

The test under section 4 is, so to speak, the "conditions" at the two localities—that is, whether they are substantially similar or dissimilar; and the test under section 3 is the *extent* of the "prejudice or disadvantage" resulting from the discrimination practiced—that is, whether or not that prejudice or disadvantage be undue or unjust in its extent to the locality discriminated against.

Under section 4 stress is laid upon the amount and force of the competition; under section 3 it is the amount or extent of the *prejudice or disadvantage.*

The language of section 3, "*undue or unreasonable* prejudice or disadvantage," relates to the *effect* of the discrimination, and necessarily calls for a measurement or consideration of the *extent* of the injury or prejudice resulting from it. The language *ex vi termini* imports or requires measurement.

In determining, therefore, whether discrimination is justified to the extent shown in this case, it is proper to consider

the effect of the discrimination on Lagrange, the locality discriminated against.

A distinct field of operation to be given to each of the sections; section 3 may apply where section 4 does not.

It is, of course, the duty of the courts to give, if possible, a distinct field of operation to each of these two sections. Counsel for the carriers concedes, or has conceded in other cases, that section 3 of the law may apply where section 4 does not. On page 45 of the printed argument filed by him in the United States circuit court of appeals for the fifth circuit, in the cases known as the "Georgia Railroad Commission cases," he says:

> "If, however, the circumstances and conditions are substantially dissimlar, while the fourth section can have no operation, *the third section remains operative*, and under that section the court can decide whether the disparity in rates constitutes an undue preference in favor of the longer distance point or an undue prejudice against the shorter distance point." (Italics mine.)

If the circumstances and conditions are shown to be substantially dissimilar under section 4 because of competition and some greater charge for a shorter than a longer haul is thereby authorized, there remains the question whether the excess of the rate to the shorter distance point over that to the longer distance point is not too great—in other words, is not undue, AND THERE IS THUS LEFT A FIELD OF OPERATION FOR SECTION 3.

It is manifest that the fact that some excess in the rates to the shorter distance point over those to the longer distance point is allowable, DOES NOT JUSTIFY ANY EXCESS THE CARRIER MAY SEE FIT TO EXACT.

Although some excess may be allowable under section 4, the actual excess charged may be undue under section 3.

CHAPTER XLIII.

Testimony of Lagrange merchants showing injury to Lagrange.

Testimony of Lagrange merchants examined as witnesses in this case shows that Atlanta merchants can compete on the streets of Lagrange on equal terms with Lagrange merchants, and that Opelika merchants can *undersell* Lagrange merchants on the streets of Lagrange; that Atlanta merchants have a monopoly of the business in all the territory between Atlanta and Lagrange, and that Opelika merchants have a monopoly of all the business in the territory between Opelika and Lagrange; that Lagrange merchants can do no business *on the line of railway at all* and are limited to a *small wagon business* out into the surrounding country.

The following is an extract from the testimony of Mr. Fuller E. Callaway, a Lagrange merchant, in answer to direct interrogatories 11 and 26:

> "Answer to interrogatory 11. The disadvantage results from the fact that an Opelika merchant can ship first-class goods from New Orleans to Opelika for $1.03 per 100 pounds and then reship that freight from Opelika to Lagrange for 32 cents per 100 pounds. This makes Opelika's combination rate from New Orleans to Lagrange $1.35 per hundredweight, while Lagrange merchants have to pay $1.43 per 100 pounds on a through shipment of first-class freight from New Orleans, through Opelika, to Lagrange. This discrimination allows an Opelika merchant to undersell the Lagrange merchant 8 cents per 100 pounds on first-class goods at the Lagrange merchant's front door. This difference applies proportionately on all classes of freight.

Also, an Atlanta merchant can ship first-class freight from New Orleans through Lagrange to Atlanta for $1.03 per 100 pounds and reship the same back to Lagrange at 40 cents per 100 pounds. This makes Atlanta's combination rate to Lagrange $1.43 per 100 pounds. In other words, this enables an Atlanta merchant to ship from New Orleans to Atlanta through Lagrange and then reship back to Lagrange at $1.43 per 100 pounds, while the through rate now charged and collected on freight shipped from New Orleans to Lagrange is $1.43 per 100 pounds. This enables the Atlanta merchant to sell goods in Lagrange at the same price as a Lagrange merchant can. Further, *an Atlanta merchant can ship first-class freight from New Orleans, through Lagrange, 495 miles to Atlanta, at $1.03 per 100 pounds, and can reship the same 59 miles back to Hogansville, toward and within 12 miles of Lagrange, at 36 cents per 100 pounds, which makes Atlanta's combination rate to Hogansville on New Orleans products $1.39 per 100 pounds. Lagrange merchants to handle Hogansville's trade have to pay $1.43 per 100 pounds from New Orleans to Lagrange and 20 cents from Lagrange to Hogansville, making Lagrange's combination rate to Hogansville $1.63 per 100 pounds. This enables Atlanta merchants to reship to Hogansville, 59 miles, and within 12 miles of Lagrange, at 24 cents per 100 pounds less than Lagrange merchants can ship to Hogansville.*

"This difference works in the same proportion on all classes of freight, the advantageous difference in favor of Atlanta getting larger and larger between each station between Hogansville and Atlanta. The result of the above discrimination builds up Atlanta and Opelika merchants at the expense of Lagrange merchants, and makes it impossile for Lagrange to be a mercantile center or jobbing point until these discriminations cease, as every local station on the Atlanta and West Point Railroad gets lower rates from New Orleans, New York, and Eastern supply markets and Ohio River supply markets, on all classes of freight, than Lagrange, although the mileage is greater at all stations between Lagrange and

Atlanta from New Orleans, and between Lagrange and Montgomery from New York." (Rec., 283.)

"Answer to interrogatory 26. Lagrange, Ga., was a town and trade center for adjacent surrounding territory *twenty years before any railroad was built to Lagrange; she had 35 to 60 miles of territory in every direction* before the railroads were built, but since then, on account of the discrimination in rates against Lagrange and in favor of other towns along the railroad, her territory has been reduced to where she *has now only from 5 to 15* miles of territory. Lagrange was incorporated by the State Legislature in 1829." (Rec. 287.)

(To the same effect is the testimony of eleven other Lagrange merchants and old citizens.)

CHAPTER XLIV.

The case within the evil the act to regulate commerce was designed to remedy.

The law to be so construed as to give it operation.

Lagrange, a natural trade center, retarded in growth by discrimination in favor of competitors in all directions.

The testimony of Lagrange merchants set forth in the preceding chapter, showing the extent of the injury to Lagrange under the discriminations complained of, presents the case of a NATURAL TRADE CENTER, in existence long before the present railroad system was established, deprived of the territory naturally tributary to it and hampered and retarded in its commercial growth by the so-called system of rate-making discriminating against it in favor of its competitors *in all directions.*

Under this system, artificial trade centers, Atlanta and Opelika, fostered by the railroads, have grown and flourished at the expense of Lagrange.

The situation of Lagrange is just such a situation as the act to regulate commerce was designed to remedy, and this case falls clearly within the evil which that act was enacted to suppress.

In the language of this court in *Union Pacific Company* v. *Goodrich* (149 U. S., 680), the law was designed to "*cut up by the roots the entire system of rebates and discriminations in favor of particular localities*, special enterprises, and favored corporations."

Statutes must be given operation.

"It is a cardinal rule that all statutes are to be so construed as to give them operation, *ut res magis valeat quam pereat.* Hence, in the construction of statutes, if it can be avoided, an interpretation is never to be adopted that would defeat the purpose of the enactment." "This," says Justice Story, "*is a rule of mere common sense.*"

(Endlich on the Interpretation of Statutes, pp. 351, 352; Potter's Dwarris on Statutes of Constitutions, p. 189.)

Statute remedial.

There is no reason why the above cardinal rule of construction should not be applied to the act to regulate commerce, but, on the contrary, there is every reason why it should be so applied. The act provides remedies in addition to those at common law and is a *remedial statute*, and under the well recognized rule it should as a remedial statute be liberally construed so as to promote the remedies it provides and suppress the mischiefs it was designed to suppress.

Counsel for the defendants will doubtless contend that under the decisions of this court the mere fact of discrimination or preference is not sufficient, and that even where, as in the present case, the discrimination or preference is shown to have resulted in the evils which the law was enacted to remedy, that is not conclusive. Yet, conceding that this court so holds, we contend that the latter fact is a matter or circumstance to be considered in determining whether the preference and prejudice are undue under section 3, and that in such a case the justification or defense set up by the carriers should be closely scrutinized and *the law be given the benefit of every reasonable doubt.*

CHAPTER XLV.

The public interests.

The right to discriminate on the ground of competition to be exercised with due regard to the interest of the locality to which the goods are shipped—in this case, Lagrange.

This court holds that in any event the right to discriminate on the ground of competition is to be exercised or enjoyed "with a due regard to the interests of the public."

L. and N. R. R. Co. *v.* Behlmer, 175 U. S., 674.

I. C. C. *v.* Ala. Mid. Ry. Co. et al., 168 U. S., 167.

E. T., Va. and Ga. Ry. Co. *v.* I. C. C., 181 U. S., 19.

Texas and Pac. Ry. *v.* I. C. C., 162 U. S., 220.

The public, as distinguished from the carriers, consists of the shippers at the shipping point and the consignees or community at the locality to which the traffic is to be delivered.

It can not be claimed that the discriminations against Lagrange subserve the interests of the public or the shippers at New Orleans, the point of shipment.

We have shown the injurious effects upon the public interests at Lagrange, the locality to which the goods are shipped, of the discriminations practiced in this case, and it is manifest that those discriminations are made regardless of the injury to those interests.

This court has taken pains in all its decisions upon this subject to safeguard the interests of the locality to which the goods are shipped.

In *Texas and Pacific Ry.* v. *I. C. C.* (162 U. S., 220), this court says:

> "The welfare of the *locality to which the goods are sent* is also, under the terms and spirit of the act, to enter into the question."

In *L. and N. R. R. Co.* v. *Behlmer* (175 U. S., 674), this court holds that—

> The right to discriminate on the ground of competition "is in every event to be only enjoyed with a due regard to the interests of the public, after giving full weight to the benefits to be conferred on the place from whence the traffic moved *as well as those to be derived by the locality to which it is to be delivered.*"

It can not be claimed that the interest of the carrier and of the favored localities benefited by the discrimination shall alone be considered, without any regard whatever for the interests of that portion of the public represented by the localities injured by the discrimination.

The favored localities able to take care of themselves; the law made for the weaker.

The favored localities are, as a general rule, larger and more powerful in every respect than the localities discriminated against, the result, in part at least, of the discrimination in their favor. *The law was made to do justice to all, but especially to protect the weak from the encroachment of the strong. The powerful can protect themselves.*

Limit on carriers' right to promote their own interest.

Discrimination is claimed to be justified only on the ground that it is necessary to enable the carrier making the discrimination to meet competition and thus retain competitive traffic. In determining the extent to which a carrier may go in *thus protecting its own interest*, we should apply the maxim of the

law, "*so use your own that you do not injure the interest of another.*"

Under this rule discrimination is only justified to the extent that it may be practiced without inflicting material injury on any *legitimate* interests of the public or any portion of the public.

When this court speaks of "the interests of the public," it refers, of course, to the *legitimate* interests of the entire public affected, *and not to interests of particular localities created and fostered by favoritism in rates at the expense of the public interests of other localities.*

In case of conflict, the interest of the public to be preferred.

Inasmuch as the carrier derives its franchise, its "right to exist," from the public, the interest of the public should be held to be paramount, and if in cases of conflict the interest of either is to be preferred it should be that of the public.

CHAPTER XLVI.

Distinctions between the present case and other cases.

The present case stronger than the Social Circle case.

As we have seen, this court holds in the Alabama Midland case (168 U. S., p. 160), that whether competition justifies exemption from the law in a given case is a *question of fact depending on the matter proved in that case.*

The facts in the case at bar distinguish it from the Alabama Midland case and from all other cases heretofore decided by the courts adversely to the Commission, in the following respects:

1. In other cases it has not been denied that the shorter distance points had the benefit of *the lowest combination.*

The case at bar is the first case in which issue has been joined on this point and evidence introduced showing that the shorter distance point discriminated against has not the benefit of the lowest combination. (See Chapter XIX.)

2. *In no other case has such strong proof been adduced of the excessiveness of the rates to the shorter distance points.*

In Chapter V of this argument we give a summary of the grounds upon which we claim that the Lagrange rates are excessive. *These grounds are eight in number.*

3. The case at bar is a case of discrimination against a point entitled to treatment as a competitive point, being on two lines of road, *in favor of strictly local stations*—Hogansville, Palmetto, and Fairburn. This feature of the case distinguishes it from all others.

In the above and many other material particulars the case at bar is distinguishable from other cases heretofore presented to the courts.

The present case stronger than the Social Circle case.

In the case known as the "Social Circle case" (C., N. O. & T. P. Ry. Co. *v.* I. C. C., 162 U. S., 184), in which the circuit court of appeals and the Supreme Court sustained the order of the Commission prohibiting higher rates to Social Circle than to Augusta, *Social Circle was a small (100 or 200 inhabitants), strictly local station on one line of road alone,* while Augusta was a large competitive point, served not only by several competing lines of railway, but also by the Savannah River. Social Circle, moreover, was given the *lowest combination* of through and local rates.

The present case is, therefore, a much stronger case in behalf of the Commission than the Social Circle case.

CHAPTER XLVII.

Burden of proof.

UNDER SECTION 4:

Where rates to shorter distance points are higher than to longer distance points the burden of proof is upon the carriers to show "a substantial dissimilarity of circumstances and conditions" justifying such higher rates. *This is admitted by counsel for carriers.*

UNDER SECTION 3:

The same is true where rates to different localities are shown under section 3 to be *relatively* unequal. The burden is upon the carrier to justify the *relative inequality.*

UNDER SECTION 1:

Counsel for carriers insists that when rates are charged to be excessive in themselves and hence in violation of section 1, the burden of proof is upon the party making the charge.

Conceding that to be so where the charge is under section 1 alone, and there are no charges under sections 3 and 4, *we claim that the burden of proof has been shifted in this case.*

The facts in evidence and relied upon by the Commission raise at least a *strong presumption* of the excessiveness of the rates to Lagrange. (See Chapter V, *supra.*)

This presumption is sufficient to shift the burden of proof *as to the reasonableness of the rates* to the defendants.

Counsel for the carriers *has practically admitted* this burden by attempting to prove by all his witnesses, on direct examination, that the rates to Lagrange are reasonable.

The Commission laid down the correct rule as to burden of proof in the case of McMorran *v.* Grand Trunk Railway of Canada (3 I. C. C. R., p. 261), as follows:

> When a rate is *prima facie* disproportionate or relatively unequal, the *onus* is on the carrier to justify its charges when challenged on these grounds. *The knowledge of the justifying circumstances and conditions relied on is peculiarly in the possession of the carrier.*

In that case the Commission further says in this connection:

> "The evidence does not show with any precision what these several expenses" (terminal expenses) "are, either in the aggregate or what would be a fair distribution of them per carload or per hundred pounds of freight. The defendants assume in their brief that the *burden* of showing these expenses was upon the petitioner; but this assumption is altogether erroneous. It would impose on persons conceiving themselves aggrieved by carriers *a difficult and onerous rule of evidence.* It would be impossible for the petitioners to show such facts otherwise than by the *defendants' agents*, and it was clearly the province of the defendants to make them appear."

The rule that the burden is on a party to prove what is peculiarly in his knowledge, whether the proposition be affirmative or negative, is elementary law, and is laid down by all text writers on the subject.

Section 367, 3d ed., Wharton on "Law of Evidence."

Section 79, 15th ed., "Greenleaf on Evidence."

CHAPTER XLVIII.

Error of circuit court of appeals in refusing to decide the case upon the merits and in practically remanding it to the Commission for reinvestigation.

The decree of the circuit court of appeals remands this case to the circuit court "*with instructions to set aside its decree adjudging that the order of the Commission be enforced and dismiss the application made for that purpose, with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law.*"

(Rec., 429.)

As precedent or authority for this order the circuit court of appeals cites the "opinions of this court" in *Interstate Commerce Commission* v. *The Clyde S. S. Co. et al.* (181 U. S., 29) and *The East Tenn., Va. and Ga. Ry. Co. et al.* v. *The I. C. C.* (Ib., 1).

In these two cases cited in the order or decree of the circuit court of appeals, and also in *Louisville and Nashville R. R. Co.* v. *Behlmer* (175 U. S., 648), this court made the same order as that above stated, *but the ground upon which this court made the order in the cases named does not exist in the present case.*

THE PRESENT CASE DOES NOT BELONG TO THAT CATEGORY OF CASES.

The Commission did not in this case, as in the cases cited by the circuit court of appeals and in the Behlmer case "unduly restrict its inquiries into the facts because of any mistaken view of the law," but considered fully competition of all kinds and all the matters of defense set up by the defendants and all the testimony offered in relation thereto.

FOR A FULL DISCUSSION OF THIS MATTER, SEE PETITION FOR REHEARING, RECORD, pp. 423–426.

The circuit court of appeals having failed to consider the case upon its merits, this court may either do so itself or remand the case to the circuit court with directions to that court to set aside its decree and proceed to determine the case according to law.

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